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Administrator of National Banks

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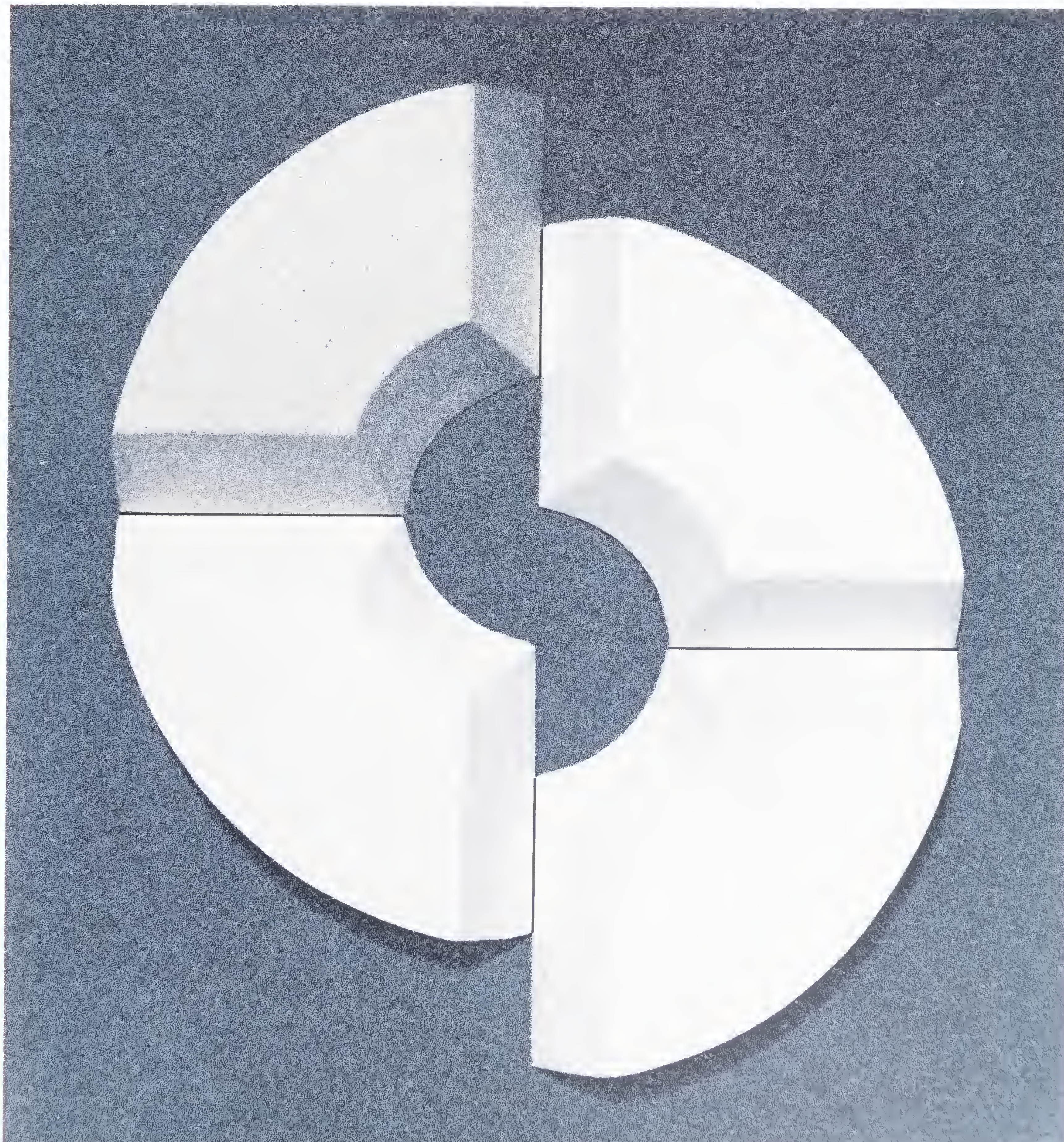

Office of the Comptroller of the Currency
1981

Comptroller	C. T. Conover

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Background

The Office of the Comptroller of the Currency (OCC) was established in 1863 as a bureau of the Department of the Treasury. The OCC is headed by the Comptroller who is appointed by the President, with the advice and consent of the Senate, for a 5-year term.

The OCC regulates national banks by its power to:

- Approve or deny applications for new charters, branches, capital or other changes in corporate or banking structure;
- Examine the banks;
- Take supervisory actions against banks which do not conform to laws and regulations or which otherwise engage in unsound banking practices, including removal of officers, negotiation of agreements to change existing bank practices and issuance of cease and desist orders; and
- Issue rules and regulations concerning banking practices and governing bank lending and investment practices and corporate structure.

The OCC divides the United States into 13 geographical regions, with each headed by a Regional Administrator.

The Office is funded through assessments on the assets of national banks.

The Comptroller

C. T. Conover became the 25th Comptroller of the Currency on December 16, 1981.

By statute, the Comptroller serves a concurrent term as a Director of the Federal Deposit Insurance Corporation, a member of the Federal Financial Institutions Examination Council and a nonvoting member of the Depository Institutions Deregulation Committee.

A former management consultant, Mr. Conover has dealt extensively with commercial banks and other financial institutions and has concentrated on solving problems in the areas of strategic planning, financial management and operations improvement.

He received a B.A. degree from Yale University in 1960 and an M.B.A. in finance from the University of California at Berkeley in 1965.

The *Quarterly Journal* is the journal of record for the most significant actions and policies of the Office of the Comptroller of the Currency. It is published four times a year in February, May, August and November. The *Quarterly Journal* includes policy statements, decisions on banking structure, selected speeches and testimony, material released in the interpretive letters series, summaries of enforcement actions, statistical data and other information of interest to the administration of national banks. Suggestions, comments or questions may be sent to the Communications Division, Office of the Comptroller of the Currency, Washington, DC 20219. Subscriptions are available for [illegible] a year by writing to the Publications Control Office—QJ, Office of the Comptroller of the Currency, Washington, DC 20219.

Quarterly Journal

Office of the Comptroller of the Currency

C. T. Conover

Comptroller of the Currency

The Administrator of National Banks

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

TO OUR READERS:

The Office of the Comptroller of the Currency's new publication, the *Quarterly Journal*, is designed to be the journal of record for the Office's most significant actions and policies. The journal will be issued in February, May, August and November.

We are enthusiastic about this new undertaking because it should provide information in a timely and comprehensive manner. The report will contain policy statements, decisions on banking structure, selected speeches and testimony, material now released in the interpretive letters series, past due loans mailings, summaries of enforcement actions and other statistical releases. In addition, the journal will include articles by the Office's research staff and examiners, as well as information which has not generally been available to the public.

Every national bank will automatically receive a single subscription free of charge. Other subscriptions, are available for $50 a year from the Publication Control Office—QJ, Office of the Comptroller of the Currency, Washington, DC 20219. Subscriptions will run from Frebruary through November and may be ordered on the form below.

QUARTERLY JOURNAL

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Contents

OCC Strategic Plan

The Office of the Comptroller of the Currency has released its first written Strategic Plan. The plan focuses on the 1980's and includes statements on the OCC's mission, goals and strategies.

The plan defines the OCC's mission as achieving "a balance between:

- Promoting and assuring the safety and soundness, while requiring a high level of compliance with law, of the national banking component of the financial system; and
- Promoting the competitiveness, efficiency, integrity and stability of the financial services marketplace."

The plan also outlines seven goals for the Office:

- To comprehend and respond to risks to the financial systems posed by economic, technological, international and competitive changes;
- To achieve a high degree of compliance by national banks with law and regulation,
- To minimize the cost and burden of regulation and supervision;
- To exercise OCC's authority to enable the financial system to provide a full array of financial services to the public in the most efficient manner;
- To promote the development of a flexible legal, regulatory and market framework that will enable the financial system to provide financial services to the public;
- To assure efficient management of OCC's resources, and
- To assure that the OCC has sufficient human resources to achieve the goals of the agency.

The plan is based on the premise that the marketplace, rather than government, will design the financial products and services of the 1980's. The plan sets forth OCC's commitment to pursue strategies that will minimize government interference in the marketplace, while at the same time permitting the Office to accomplish its central mission.

Comptroller of the Currency C. T. Conover said that one likely result of the plan would be to reduce the burden of compliance for banks. He said the Office would make greater use of improved information gathering and analytical techniques to monitor the condition of banks and that it would continue to shift its resources to the industry segments that represent the greatest risk to the banking system as a whole.

Conover said that the plan would be regularly reviewed and updated to recognize continuing changes in the financial environment.

Condition of the National Banking System

Despite sustained high interest rates during the first 9 months of 1981 and the onset of recessionary conditions by July of that year, national banks generally performed well and continued to enjoy moderate growth. The consolidated assets of the 4,463 insured national banks in operation on September 30, 1981, totaled $1,157 billion, a 9.6 percent increase over the year-earlier figure. National banks accounted for nearly 59 percent of all assets in insured commercial banks, a proportion that has varied little during the past decade.

Although national banks maintained moderate nominal asset growth and retained their share of the commercial bank market over the preceding 12 months, there was no real growth. The gross national product price deflator, a broad measure of inflation, increased 9.2 percent over the same period; therefore, in terms of constant 1972 dollars, national bank assets increased only $2.3 billion. That 0.4 percent increase contrasts with the dramatic increase from $77 billion to $161 billion in assets in money market funds.

The first table in this section provides a complete balance sheet for the national banking system as of September 30, 1981, with comparable figures for the same date 1 year earlier. That table shows that loan growth was strong for the 12-month period, increasing 10.8 percent to $636 billion and accounting for more than 60 percent of the total growth of assets. Net loans at foreign offices of national banks reached $142 billion, increasing only slightly more rapidly than those at domestic offices, 12.0 percent compared to 10.4 percent. Details on domestic office loans is provided in the "Statistical Tables" section.

Although the average prime rate charged by banks on short-term business loans was over 17 percent during the 10 months ending September 30th (and over 20 percent for the last 4 of those), commercial and industrial loans at domestic offices of national banks increased 13.7 percent to $185 billion. Although the housing market was very depressed during the period, holdings of mortgage loans on one- to four-family residential properties increased a modest 6.9 percent to $88 billion. One third of that $5.7 billion increase was accounted for by national banks in California. Adjustable-rate mortgages are commonly available in California, suggesting that new mortgage instruments are crucial to the continued growth in real estate lending.

Lease financing grew at a slightly greater rate than total loans, growing 11.0 percent to $10 billion. In contrast to the substantial growth in lending and leasing, holdings of all securities increased only 5.7 percent. Securities now comprise only a little more than 15 percent of national bank assets.

In contrast to the relatively slow shift in asset composition, the liability structure of national banks continues to shift rapidly in response to new deposit instruments, high interest rates and intensified competition for deposits. Total deposits at domestic offices increased 9.8 percent to $670 billion, a very similar rate to the change in total liabilities, but the composition of those deposits changed sharply. Demand deposits dropped $20 billion, nearly 9 percent, over the 12-month period. Demand deposits have been growing more slowly than time and savings deposits for some time, however, that actual decline results from large transfers to interest-bearing transaction accounts which are classified as savings deposits. Negotiable order of withdrawal (NOW) accounts, which had been available in New England for some time, were authorized nationally as of December 31, 1980. As a result, deposits in automatic transfer and NOW accounts soared from $11 billion in September 1980 to $31 billion in September 1981. More detail on deposits in domestic offices is available in the "Statistical Tables" section.

Time and savings deposits jumped nearly $80 billion or 20.7 percent during the same period. That was partly the result of transfers from demand deposits to interest-bearing transaction accounts, but was more importantly due to a continued very rapid growth in high interest-bearing time deposits. Money market certificates of deposit, which were introduced in 1978, totaled $118 billion at the end of September 1981. That was an increase of $40 billion, or 51 percent, over the preceding 12 months. Similarly, large denomination ($100,000 or more) certificates of deposit increased 36 percent to $163 billion. Large certificates of deposit, other large time deposits and money market certificates of deposit accounted for 63 percent of the total time and savings deposits in domestic offices at the end of September 1981. Those changes, in part, reflect investment of a significant portion of money market mutual fund assets in commercial bank certificates of deposit.

Deposits in foreign offices of national banks increased 9.5 percent to $222 billion, a rate of growth closely paralleling that of total liabilities at national banks. The recent balanced growth between domestic and foreign offices is in sharp contrast to the late 1970's when foreign office assets and liabilities grew much faster than those at domestic offices.

The rapid growth in market-rate deposits was offset in part by the very modest growth in federal funds purchased and repurchase agreements. That major

Assets, liabilities and capital accounts of national banks, September 30, 1980, and September 30, 1981
(Dollar amounts in millions)

	September 30, 1980 4,425 banks		September 30, 1981 4,463 banks*		Change Sept. 30, 1980–Sept. 30, 1981 Fully consolidated	
	Consolidated foreign and domestic	*Domestic offices*	*Consolidated foreign and domestic*	*Domestic offices*	*Amount*	*Percent*
Assets						
Cash and due from depository institutions	$ 197,486	$107,415	$ 206,652	$111,339	$ 9,166	4.64
U.S. Treasury securities	48,443	48,325	49,153	49,036	710	1.47
Obligations of other U.S. government agencies and corporations	27,403	27,378	31,893	31,844	4,490	16.39
Obligations of states and political subdivisions	76,738	76,096	79,822	79,165	3,084	4.0[illegible]
All other securities	14,671	8,217	15,878	10,479	1,207	8.23
Total securities	167,255	160,016	176,746	170,524	9,491	5.67
Federal funds sold and securities purchased under agreements to resell	39,262	39,110	42,732	42,396	3,470	8.84
Total loans (excluding unearned income)	579,931	453,238	642,453	500,496	62,522	10.78
Allowance for possible loan losses	5,929	5,763	6,669	6,468	740	12.48
Net Loans	574,002	447,475	635,784	494,027	61,782	10.76
Lease financing receivables	9,101	7,507	10,104	8,379	1,003	11.02
Bank premises, furniture and fixtures, and other assets representing bank premises	14,968	14,086	17,058	15,860	2,090	13.96
Real estate owned other than bank premises	1,324	1,192	1,381	1,277	57	4.31
All other assets	52,634	57,000	66,992	67,566	14,358	27.28
Total assets	1,056,033	833,802	1,157,449	911,368	101,416	9.60
Liabilities						
Demand deposits of individuals, partnerships and corporations	176,456	176,456	155,620	155,620	−20,836	−11.81
Time and savings deposits of individuals, partnerships and corporations	345,327	345,327	422,040	422,040	76,713	22.21
Deposits of U.S. government	1,646	1,646	2,856	2,856	1,210	73.51
Deposits of states and political subdivisions	39,920	39,920	39,962	39,962	42	.11
All other deposits	39,978	39,978	43,082	43,082	3,104	7.76
Certified and officers' checks	7,446	7,446	6,791	6,791	−655	−8.80
Total deposits in domestic offices	610,773	610,773	670,350	670,350	59,577	9.75
Demand deposits	225,336	225,336	205,272	205,272	−20,064	−8.90
Time and savings deposits	385,437	385,437	465,078	465,078	79,641	20.66
Total deposits in foreign offices	202,994	0	222,373	0	19,379	9.55
Total deposits	813,767	610,773	892,723	670,350	78,956	9.70
Federal funds purchased and securities sold under agreements to repurchase	93,859	93,503	96,067	95,930	2,208	2.35
Interest-bearing demand notes issued to U.S. Treasury	11,523	11,523	10,527	10,527	−996	−8.64
Other liabilities for borrowed money	19,307	9,301	21,893	10,317	2,586	13.39
Mortgage indebtedness and liability for capitalized leases	1,326	1,313	1,473	1,461	147	11.09
All other liabilities	53,801	45,213	66,638	54,905	12,837	23.86
Total liabilities	993,583	771,625	1,089,321	843,489	95,738	9.64
Subordinated notes and debentures	3,789	3,516	3,527	3,279	−262	−6.91
Equity Capital						
Preferred stock	34	34	43	43	9	26.47
Common stock	11,848	11,848	12,572	12,572	724	6.11
Surplus	18,642	18,642	19,617	19,617	975	5.23
Undivided profits and reserve for contingencies and other capital reserves	28,137	28,137	32,369	32,369	4,232	15.04
Total equity capital	58,661	58,661	64,600	64,600	5,939	10.12
Total liabilities, subordinated notes and debentures and equity capital	1,056,033	833,802	1,157,449	911,368	101,416	9.60

* Excludes three noninsured national trust banks with total assets of $18 million

source of short-term funding, used particularly by large national banks, increased only 2.4 percent to $96 billion for the 12-month period. However, the national banking system is becoming steadily more reliant on market-rate funds. For example, purchased funds (defined as foreign office deposits, large time deposits, federal fund and repos, and borrowings, including notes to U.S. Treasury) were equal to 47.5 percent of total assets, up from 44.4 percent 2 years earlier. If money market certificates of deposit are included in that measure, the change is even more marked, 57.7 percent of total assets on September 30, 1981, as compared to 48.6 percent on September 30, 1979.

Since 1980, equity capital at national banks has increased more rapidly than assets, resulting in a modest increase in their equity-to-capital ratio. That ratio is now 5.6 percent, compared to 5.4 at the end of 1979.

Most national banks do not report income data for the third quarter. However, at midyear national banks reported an increase of 8.7 percent in earnings over the corresponding period in 1980. The continued steady growth in equity capital through the third quarter implies that those improved earnings have continued.

Delinquent loans at national banks increased sharply between June and September, increasing from 4.2 to 4.7 percent of total domestic office loans. National banks reported $24 billion as past due, up from $21 billion on June 30, the sharpest increase since data collection began in November 1974. That increase occurred during a quarter of sustained high interest rates and declining industrial production and business sales. Continuation of those recessionary conditions will result in net loan losses for the year of about $2 billion, a substantial increase over 1980. National banks have been steadily increasing their allowance for possible loan losses, and those reserves now total $6.7 billion, more than 1 percent of total loans.

Large national banks typically have higher proportions of past due loans and some banks have quite high levels, but the average bank has a very low level of delinquencies. As the past due loans tables in the "Statistical Tables" show, the average ratio for all national banks is 3.9 percent, up from 3.6 percent a year earlier.

Large national banks reported year-to-date income for September 30, 1981. Two tables in this section provide balance sheet and income data for those 293 national banks. Those banks have total assets of $924 billion, nearly 80 percent of the assets held by national banks. They include the 124 national banks which were operating international offices at the end of September. Balance sheet information on those banks is available from a table in the "Statistical Tables."

Large national banks invest more of their assets, nearly 56 percent, in loans, and less in securities, about 12 percent. Because they account, in part, for all foreign office deposits, those banks have a higher ratio of purchased funds to total assets, 65.3 percent. With the addition of money market certificates of deposit, that proportion rises to 72.4 percent. Large national banks are also more highly leveraged than others, with an equity-to-capital ratio of 4.9 percent.

Those banks reported net income for the 9 months ending September 30, 1981, of $4,325 million. On an annualized basis that equals 0.62 percent of their assets and 12.7 percent of their equity capital. That is the same return on assets and return on equity earned by large national banks during 1980. Despite the recent rise in past due loans, those banks had $1,169 million in net loan losses, slightly less than the $1,204 million figure for the first 9 months of 1980 reported by 279 large banks that September.

With large bank earnings holding steady through the third quarter and the solid earnings of the entire system for the first half, national banks continued to enjoy moderate growth in earnings and assets.

Consolidated assets and liabilities of large national banks, September 30, 1981*
(Dollar amounts in millions)

	293 banks	
	Foreign† and domestic offices	*Domestic offices*
Cash and due from depository institutions	$182,573	$ 87,260
U.S. Treasury securities	28,731	28,614
Obligations of other U.S. government agencies and corporations	16,223	16,173
Obligations of states and political subdivisions in the United States	51,127	50,470
Other bonds, notes and debentures	5,482	1,175
Federal Reserve stock and corporate stock	1,145	984
Trading account securities	8,072	7,141
Federal funds sold and securities purchased under agreements to resell	30,809	30,473
Loans, total (excluding unearned income)	519,632	377,676
Allowance for possible loan losses	5,341	5,140
Loans, net	514,292	372,536
Lease financing receivables	9,765	8,041
Bank premises, furniture and fixtures, and other assets representing bank premises	12,314	11,116
Real estate owned other than bank premises	1,041	937
Investments in unconsolidated subsidiaries and associated companies	1,141	314
Customers' liability on acceptances outstanding	35,408	27,036
Other assets	25,785	35,558
Total assets	923,907	677,827
Demand deposits of individuals, partnerships and corporations	114,153	114,153
Time and savings deposits of individuals, partnerships and corporations	283,713	283,713
Deposits of U.S. government	2,161	2,161
Deposits of states and political subdivisions in the United States	25,031	25,031
Deposits of foreign governments and official institutions	3,817	3,817
Deposits of commercial banks	37,195	37,195
Certified and officers' checks	4,987	4,987
Total deposits in domestic offices	471,057	471,057
Total demand deposits	156,728	156,728
Total time and savings deposits	314,329	314,329
Total deposits in foreign offices	222,373	NA
Total deposits	693,430	471,057
Federal funds purchased and securities sold under agreements to repurchase	86,853	86,716
Interest-bearing demand notes issued to the U.S. Treasury	9,895	9,895
Other liabilities for borrowed money	21,254	9,678
Mortgage indebtedness and liabilities for capitalized leases	1,201	1,190
Banks' liability on acceptances executed and outstanding	25,244	28,855
Other liabilities	37,695	22,350
Total liabilities	875,572	629,740
Subordinated notes and debentures	2,990	2,741
Preferred stock	30	30
Common stock	8,965	8,965
Surplus	14,063	14,063
Undivided profits	21,860	21,860
Reserve for contingencies and other capital reserves	427	427
Total equity capital	45,345	45,345
Total liabilities and equity capital	923,907	677,827

* Large national banks include all those with assets over $300 million as of either June 30, 1980 or 1979, and all national banks with foreign offices

† For reporting purposes, foreign offices include Edge and Agreement subsidiaries located in Puerto Rico, Virgin Islands and Trust Territories

Year-to-date income and expenses of large national banks, September 30, 1981*
(Dollar amounts in millions)

	293 banks	
	Consolidated foreign and domestic	*Percent distribution*
Operating income		
Interest and fees on loans	$61,448.9	68.4
Interest on balances with depository institutions	10,519.7	11.7
Income on federal funds sold and securities purchased under agreements to resell	3,531.9	3.9
Interest on U.S. Treasury securities and on obligations of other U.S. government agencies and corporations	3,542.6	3.9
Interest on obligations of states and political subdivisions in the United States	2,551.3	2.8
Income from all other securities (including dividends on stock)	607.6	0.7
Income from lease financing	824.9	0.9
Income from fiduciary activities	1,156.0	1.3
Service charges on deposit accounts	962.1	1.1
Other service charges, commissions and fees	2,341.8	2.6
Other operating income	2,340.0	2.6
Total operating income	89,827.0	100.0
Operating expenses		
Salaries and employee benefits	9,145.7	10.9
Interest on time certificates of $100,000 or more (issued by domestic offices)	14,988.8	17.9
Interest on deposits in foreign offices	23,867.1	28.5
Interest on other deposits	11,667.1	13.9
Expense of federal funds purchased and securities sold under agreements to repurchase	11,454.1	13.7
Interest on demand notes issued to the U.S. Treasury and on other borrowed money	2,710.8	3.2
Interest on subordinated notes and debentures	206.1	0.2
Occupancy expense of bank premises, net, and furniture and equipment expense	2,759.5	3.3
Provision for possible loan losses	1,677.8	2.0
Other operating expenses	5,231.2	6.2
Total operating expenses	83,708.2	100.0
Income before income taxes and securities gains or losses	6,118.8	
Applicable income taxes	1,600.5	
Income before securities gains or losses	4,518.3	
Securities gains (losses), gross	−393.0	
Applicable income taxes	−183.2	
Securities gains (losses), net	−209.8	
Income before extraordinary items	4,308.5	
Extraordinary items, net	16.5	
Net income	4,325.0	
Cash dividends declared on common stock	1,723.0	
Cash dividends declared on preferred stock	1.7	
Total cash dividends declared	1,724.7	
Recoveries credited to allowance for possible loan losses	543.1	
Losses charged to allowance for possible loan losses	1,712.2	
Net loan losses	1,169.2	
Ratio to total operating income		
Interest on deposits	56.2	
Other interest expense	16.0	
Salaries and employee benefits	10.2	
Other noninterest expense	10.8	
Total operating expenses	93.2	
Ratio of net income (annualized) to		
Total assets (end of period)	0.62	
Total equity capital (end of period)	12.72	

* Large national banks include all those with assets over $300 million as of either June 30, 1980 or 1979, and all national banks with foreign offices

Changes in the Structure of the National Banking System

The national banking system consisted of 4,466 national banks on December 31, 1981, an increase of 41 banks over 1980. The number of new national bank application filings increased noticeably in 1981 to 243 compared to 116 in 1980. By year-end 1981, 24 state banks had converted to national charters, twice the amount completed in 1980. At the same time, there was a significant reduction in the number of national banks which converted to state charters, only 10 in 1981 compared with 46 in 1980.

The increase in the number of national bank charters filed during 1981 continued to reflect the effects of the Office's revised and rearticulated chartering policy. In addition, favorable economic growth trends in the nation's sunbelt areas continued to attract financial intermediary investors, including those identifying the need for commercial banks.

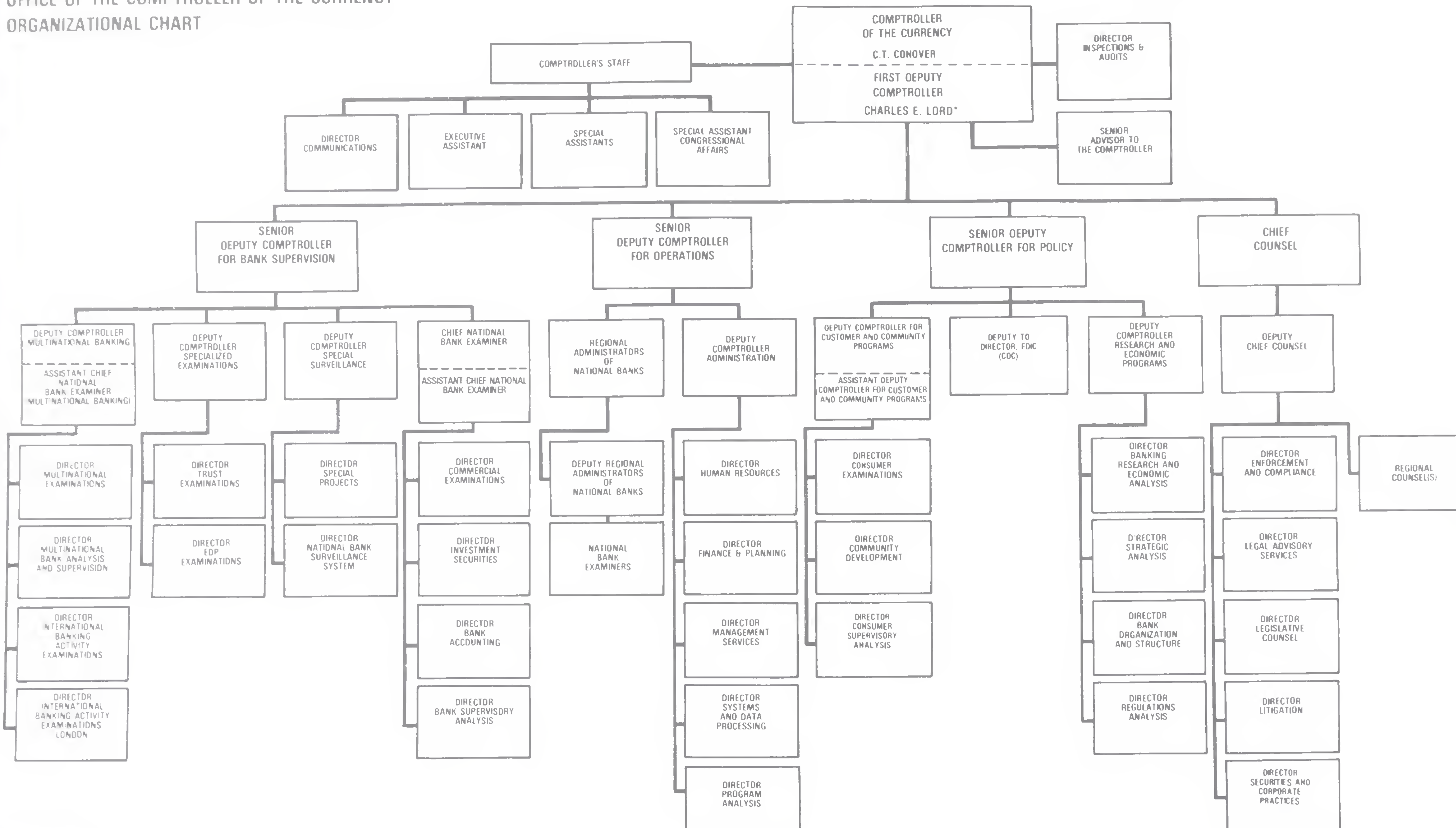
Merger activity soared in 1981. Merger applications reviewed during the year totaled 267, 162 more than in 1980. Of those reviewed, 199 were approved, one was denied, one was withdrawn and 190 were consummated. The Office views the increase in mergers as attributable, in part, to the industry's desire to improve commercial banks' ability to provide an expanding range of services in response to increasing competition from nonbank providers of financial services.

Reflecting continued developments in the automated delivery of financial services, customer bank communications terminals continued to increase, with 593 applications filed in 1981 compared to 293 in 1980. Traditional branch filings declined to 586 in 1981 from 601 in 1980.

Another area of expansion was the number of federal branches and agencies operating in the United States, which totaled 35 as of December 31, 1981. There continues to be strong investment interest in the U.S. economy by foreign groups. As of year-end 1981, 30 federal branch/agency applications were received, 28 were approved, none were withdrawn or denied, and six were pending.

The Office received 104 prior notices of intent to acquire control of a national bank and processed 112 such notices. Five were withdrawn; three were disapproved; and 11 were pending at year-end.

OFFICE OF THE COMPTROLLER OF THE CURRENCY ORGANIZATIONAL CHART



*RESIGNATION SUBMITTED

DECEMBER 1981

Comptroller's Report of Operations—1981

The Comptroller discharges his responsibilities for the supervision and regulation of national banks through a nationwide staff of bank examiners and other professional and support personnel. There is an informal Policy Group made up of the statutory positions of Senior Deputy Comptroller for Operations, Senior Deputy Comptroller for Policy and Senior Deputy Comptroller for Bank Supervision and the Chief Counsel.

The Policy Group's primary purpose is to advise the Comptroller on the development and implementation of OCC policy. The group also discusses appropriate action on any complex, controversial or highly sensitive issues or matters which could have significant impact on the OCC, its employees or the industry it supervises.

Policy Group members have operational responsibility for the functional areas of the OCC as shown on the facing organizational chart.

Comptroller's Staff

The Comptroller has a small personal staff that directs, coordinates and manages the day-to-day operations of the office and advises the Comptroller on policy formulation and technical procedures. The staff conducts studies, surveys and investigations and develops the framework, monitoring and management of special projects. The Comptroller's Executive Assistant and Special Assistants may act on behalf of the Comptroller, carrying out policies and directions and providing liaison with other agencies.

Division of Inspections and Audits—The Division of Inspections and Audits is an independent appraisal activity within the OCC that provides objective and constructive review and appraisal of financial, accounting and operational activities and conducts investigations of matters relating to legality or propriety of actions by or conduct of OCC employees. The division, created in May 1979, functions as an independent counselor to the Comptroller.

Communications Division—The Communications Division provides information and publications services to the public. Information services include press releases, responses to press inquiries, general inquiries relating to the agency's mission and requests under the Freedom of Information and Privacy acts.

In addition to producing OCC publications, the division also maintains subscription lists for the *Comptroller's Manual for National Banks*, various examination handbooks and major publications. Approximately 8,800 new requests and approximately 6,000 renewals were processed for handbooks and other publications in 1981. Subscription lists were computerized and billing procedures consolidated to help speed up the distribution process.

The division issues and maintains banking and examining issuances, interpretive letters and administrative directives. In addition, the division processes all submissions to the *Federal Register*, produces the *Quarterly Journal* and compiles the *Daily News Digest*.

The Director of Communications serves as liaison between the Comptroller and the press. News releases are issued on significant OCC actions and on testimony before Congress by the Comptroller and the OCC staff.

The Deputy Director, under authority delegated by the Comptroller, makes initial determinations on requests for records of the OCC under the Freedom of Information Act and the Privacy Act of 1974. In 1981, 966 such requests were processed.

Senior Deputy Comptroller for Operations

The Senior Deputy Comptroller for Operations is responsible for the overall operational effectiveness and efficiency of the OCC. The Senior Deputy supervises the 14 regional offices, the Conference Office, the Deputy Comptroller for Administration and the Washington Office divisions of Management Services, Finance and Planning, Systems and Data Processing, Human Resources, Equal Employment Opportunity and Program Analysis. In addition, the Senior Deputy serves as a member of the Federal Financial Institutions Examination Countil's Task Force for Examiner Education.

Since 1962, the OCC has operated out of the 14 regional offices and a number of subregional offices. Each regional office is headed by a regional administrator of national banks who is assisted by two deputy regional administrators and a number of regional directors for specific functions. The table on p. 12 shows the regional administrators and the states they oversaw as of December 1981. The consolidation of Region 13 into Region 14 will be effective January 1, 1982. The consolidated region, with headquarters in San Francisco, Calif., will be known as Region 13.

Senior Deputy Comptroller for Policy

The Senior Deputy Comptroller for Policy provides advice and counsel to the Comptroller on all related policy matters and has been delegated sole decision-making responsibility on national bank charter and

merger applications and numerous other types of national bank applications relating to corporate activities. In addition, the Senior Deputy provides staff support to the Comptroller for his activities on the Depository Institutions Deregulation Committee.

The Senior Deputy Comptroller for Policy oversees the Research and Economic Programs and Customer and Community Programs departments and coordinates the Comptroller's responsibilities as a member of the Board of Directors of the Federal Deposit Insurance Corporation.

Senior Deputy Comptroller for Bank Supervision

The Senior Deputy Comptroller for Bank Supervision formulates, implements and monitors bank supervisory policy. Related responsibilities include remote screening of national banks to detect trends and changes in the banking system which warrant attention, monitoring supervisory postures to ensure national consistency and participating on bank supervisory matters in the Federal Financial Institutions Examination Council. The Senior Deputy is responsible for ensuring that the OCC's examination policies and procedures are effective and dynamic enough to adequately supervise the national banks. That responsibility is effected through supervision of the Offices of the Chief National Bank Examiner, Deputy Comptroller for Specialized Examination, Deputy Comptroller for Special Surveillance and Deputy Comptroller for Multinational Examinations.

Chief Counsel

The Chief Counsel advises the Comptroller on legal matters arising in the administration of laws, rulings and regulations governing national banks. The Chief Counsel directs all legal functions in and for the OCC. Those duties involve writing and interpreting legislation, resolving the most difficult legal problems/questions, clarifying the OCC's position and representing the OCC in all legal matters. Those responsibilities are carried out through supervision of the Enforcement and Compliance, Legal Advisory Services, Legislative Counsel, Litigation, and Securities and Corporate Practices divisions and a system of regional counsels throughout the country.

Regional administrators of national banks, December 1981

Region	Name	Headquarters	States
1	Ralph W. Gridley	Boston, Mass.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
2	Thomas W. Taylor	New York, N.Y.	New Jersey, New York, Puerto Rico, Virgin Islands
3	R. Coleman Egertson	Philadelphia, Pa.	Pennsylvania, Delaware
4	Larry T. Gerzema	Cleveland, Ohio	Indiana, Kentucky, Ohio
5	John F. Downey	Richmond, Va.	District of Columbia, Maryland, North Carolina, Virgina, West Virginia
6	Robert J. Herrmann	Atlanta, Ga.	Florida, Georgia, South Carolina
7	Rufus O. Burns, Jr.	Chicago, Ill.	Illinois, Michigan
8	Dean S. Marriott	Memphis, Tenn.	Alabama, Arkansas, Louisiana, Mississippi, Tennessee
9	Michael A. Mancusi	Minneapolis, Minn.	Minnesota, North Dakota, South Dakota, Wisconsin
10	John W. Rogers (Acting)	Kansas City, Mo.	Iowa, Kansas, Missouri, Nebraska
11	Clifton A. Poole, Jr.	Dallas, Tex.	Oklahoma, Texas
12	Peter C. Kraft	Denver, Colo.	Arizona, Colorado, New Mexico, Utah, Wyoming
13	M. B. Adams	Portland, Oreg.	Alaska, Idaho, Montana, Oregon, Washington
14	Kent D. Glover	San Francisco, Calif.	California, Guam, Hawaii, Nevada

Examination and Supervision

Multinational Banking

The Multinational Banking Department was established in 1979 to centralize all supervisory aspects of the largest national banks. That supervision includes examination activities, financial analysis and recommendations on corporate applications. The department supervises all banks with assets in excess of $10 billion and the international activities of all national banks.

There are currently 11 national banks which meet the size criterion. As of June 30, 1981, those banks had combined assets of $462 billion which represented 43 percent of the combined assets of the entire national banking system. Those 11 banks operate

worldwide and play an integral role in the functioning of the U.S. banking system. Because of the high visibility and financial size of that group, threats to, or problems arising in, those institutions have the potential to seriously disrupt domestic and global banking systems.

The department is also responsible for supervising federal branches and agencies of foreign banks licensed under the International Banking Act of 1978. That includes processing and analysis of the International Banking Act applications and monitoring and followup of examinations of such branches and agencies after they are in operation.

During 1981, the Multinational Banking staff made substantial contributions to the development of OCC policy and supervisory positions. The department was the focal point for developing positions concerning areas involving international activities and new supervisory techniques.

The Deputy Comptroller for Multinational Banking and other staff members serve as the OCC's liaison with financial supervisors throughout the world. That includes representation on the Cooke Committee, a working group of bank regulators from the Group of Ten countries and other European countries who meet regularly to discuss common regulatory issues.

Organizationally, the department operates under the supervision of the Senior Deputy Comptroller for Bank Supervision. The department has four integrated operating units: Multinational Examinations, Multinational Analysis, International Activities and Examinations, and London Examinations and Activities. As a department, the four divisions carry out their regulatory responsibilities by reviewing, analyzing and deciding on the multinational banks' major organizational plans in the United States and abroad.

Multinational Examinations manages the consolidated onsite prudential examinations of the 11 largest banks and legal and banking issues related to those banks. During 1981, the unit developed and implemented an automated tracking system to synthesize and monitor examination results.

Multinational Analysis designs, develops and implements a wide assortment of financial analysis, surveillance and monitoring systems for the multinational banking companies. The division developed and maintains a complete data base for multinational banking companies. In 1981, a financial computer model was completed, permitting forecasting under various "what if" scenarios.

International Activities and Examinations manages the examination schedule for all international activities of U.S. banks and federally chartered activities of foreign banks. The division is also responsible for all foreign organizational applications of U.S. banks and U.S. organizational applications of foreign banks. It has OCC responsibility for monitoring and evaluating country risk. In 1981, the director of the division was the Chairman of the Interagency Country Exposure Review Committee.

London Examinations and Activities performs three main functions. First, it is responsible for examining all national banks' activities in London. Second, the staff maintains relationships with technical counterparts in European countries. Third, the unit acts as the OCC's "eyes and ears" in London.

Commercial Examinations

The Commercial Examinations Division performs technical research, writing and related duties to support development, continuous review and periodic updating of policies and procedures related to the OCC's bank supervisory mission and the commercial examination process. The division revises and updates the *Comptroller's Handbook for National Bank Examiners* semiannually and is responsible for the administration of the uniform commission examination for national bank examiners. In addition to recommending bank supervisory policy positions to senior management and developing new or revised examination procedures in response to changes in the banking industry, the division prepares congressional testimony, speeches, correspondence and reports. The division functions as a liaison with other regulatory agencies, the banking industry and related groups on matters relating to commercial examination policies and procedures.

A partial but illustrative list of activities undertaken by the division in 1981 includes the development and publication of a proposed definition of "capital" which would be applied for both statutory and adequacy purposes, the development of new or revised examination programs to evaluate the strategic planning and insurance and risk management activities of banks, and the development of revised policy guidelines for the coin and bullion activities of banks. The division was also a major contributor to the development of a statement of capital adequacy guidelines for banks, and it participated in a number of Federal Financial Institutions Examination Council subcommittees dealing with bank supervisory matters.

The division also administers the Shared National Credit Program which provides a uniform nationwide review of loans of $20 million or more where the credit is shared by two or more banks. The 1981 Uniform Review of Shared National Credits, which began the first week of May, was the most extensive since the program began in 1975. Simultaneous reviews by the Federal Reserve Board, the Federal Deposit Insurance Corporation and the OCC covered 1,393 shared credits which aggregated $158 billion, or approximately 20 percent of all domestic commercial bank credit.

The Investment Securities Division continues to serve as a focal point for bank securities dealer activities and investment securities matters. In 1981, the division developed and implemented regulatory policies dealing with deposit substitutes, e.g., publicly offered nondeposit investment vehicles created by commercial banks to compete with money market mutual funds. Most notable in that area was the dissemination of practical guidelines concerning the marketing of small denomination repurchase agreements (retail repos).

To ensure an adequate understanding of OCC regulatory policies regarding securities related banking activities, Investment Securities Division trained some

nars were conducted for approximately 250 OCC examiners and 100 other federal and state bank or securities regulators. As an extension of the division's educational programs, division personnel served as speakers or panelists in 20 banking, securities or commodities industry-sponsored forums.

Division personnel participated in the 1981 examinations of the investment divisions of some of the largest national banks. Investigations of problem banking matters and possible violations of the antifraud provisions of the federal securities laws have also been conducted.

The Bank Supervisory Analysis Division assists the Chief National Bank Examiner in the oversight of banks with composite ratings of 1 and 2. Commercial reports of examination of over 4,000 banks are sampled and reviewed by the division. The reviews cover approximately 20 percent of all the reports received by the Chief National Bank Examiner's office.

The review process was established to disclose recurring departures from examination policies and procedures and to detect common errors and deficiencies in reports of examination. In the past, feedback to regions has generally been limited to comments reflecting criticisms of nationwide applicability. The review system was redesigned to provide appropriate feedback to each region.

The multibank holding company examination concept was implemented on a nationwide basis in 1981. The examination of national banks in holding company systems from the holding company level using the companies' plans, policies and internal monitoring systems has proven effective in avoiding duplication and has allowed more efficient use of resources. The examinations provide a greater understanding of the condition of the system as a whole and contribute to more effective supervision.

The Chief National Bank Examiner's office implemented the abbreviated examination on a nationwide basis in 1981. The abbreviated examination is designed to provide the most efficient use of OCC resources in examining small historically sound and well-managed banks. The abbreviated examination is another concept developed by OCC which recognizes that resource constraints and the growing diversification of bank activities require the OCC to use new examination techniques. The Bank Supervisory Analysis Division monitors the development of that process.

The division developed the monthly newsletter, *Chief Notes*, to disseminate items of current interest on various examination and supervision topics. Much of the information about changing areas of the examination and deviation from prescribed procedures are provided to the examining staff through the *Chief Notes*.

The division also assists the Chief National Bank Examiner in administration of the civil money penalty process. The division is responsible for making recommendations on the propriety of all civil money penalty matters involving banks rated 1 or 2. A monthly report was developed to inform all appropriate parties of the status of each referral.

The Bank Accounting Division is responsible for four primary functions. The division establishes accounting principles for national banks, provides interpretations of existing accounting principles and practices, serves as an authoritative source of bank accounting issues for other OCC departments and divisions, and is responsible for reviewing financial statements in merger proxy statements and offering circulars.

During 1981, the division made considerable progress in meeting its goal of reducing the differences between regulatory and generally accepted accounting principles (GAAP). That included active participation with the Financial Accounting Standards Board, the American Institute of Certified Public Accountants and various accounting firms. Results included policy issuances which conformed to GAAP on coupon stripping, capitalization of interest and deposit intangibles. Additionally, formal responses were issued in connection with various accounting standard-setting Financial Accounting Standards Board proposals.

The division also responded to a significantly increased number of requests for accounting interpretations, principally in the securities transactions area. The requests reflected the growing number of innovative security transactions involving tax considerations. Those requests originated from individual banks, bank examiners, accounting firms and various other departments of the OCC.

As the OCC's authoritative source on bank accounting issues, the division served as expert consultant on a number of enforcement and compliance matters. It also presented the OCC's view on various emerging accounting issues at several industry accounting conferences.

The division reviewed financial statements including those in 149 major proxy statements (12 CFR 11.5 and 11.51), 37 offering circulars (12 CFR 16) and 11 registration statements on Form F-1 (12 CFR 11.4 and 11.41).

Trust Examinations

The Trust Examinations Division is concerned with safety and soundness and compliance with laws. Trust supervision ensures that fiduciary activities exercised by national banks are consistent with the best interests of fiduciary beneficiaries and other parties at interest, including the banks, their depositors and shareholders, and all applicable laws and regulations.

That mission is accomplished by examinations, specialized examiner instruction, promulgation of regulations and interpretive bulletins, collection and compilation of fiduciary data, issuance of administrative enforcement actions and industry liaison. In 1981, 1,114 domestic trust examinations were performed. Also, an examination was conducted of the foreign fiduciary activities of a major national banking system. A total of 34 applications for fiduciary powers were processed by the division.

The division developed and implemented a revised specialized trust examination approach, designed as a minimum scope overview examination in trust departments administering fiduciary assets in excess of $20 million. The revised specialized approach, and the basic investigative trust examination (BITE) developed in 1980, will serve as alternatives to the full-scope general examination. Those alternative approaches are

designed to further the OCC policy of developing examinations which will monitor activities based on the scope of banking activity, the inherent risks involved, and the bank's proven performance. The successful implementation of the BITE, developed for use by trust or commercial examining personnel, required a substantial commitment to training commercial examiners in fiduciary administration and operations. Other internal training efforts during 1981 included a revised National Trust Examiner commissioning examination and a senior management level training conference on fiduciary subjects.

In 1981, in coordination with the Federal Financial Institutions Examination Council, data pertaining to fiduciary assets administered and collective investment funds operated were collected, compiled and disseminated. Associated reporting and information collection burdens were inventoried and approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980. For the second consecutive year, data were compiled on the extent to which banks engage in foreign fiduciary activities. In addition, the trust activities report, which analyzes, by peer group, the profitability of trust departments with assets of more than $10 million, was revised and enhanced.

Under the Securities Reform Act of 1975, the OCC has specific jurisdiction over national banks acting as registered transfer agents. To fulfill that responsibility, each trust examination includes a review of the registered transfer agency functions. In 1980, the OCC, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the SEC initiated an effort to revise the uniform transfer agent registration form (TA-1). That effort continued in 1981. Effective December 30, 1980, a major burden associated with form TA-1 was eliminated when the annual amendment to Schedule B listing each issue handled by a registered transfer agent was discontinued. Interagency cooperation and coordination was enhanced by implementing a system for referring information concerning possible violations of the Employee Retirement Income Security Act of 1974.

In 1981, the Trust Division revised its hourly fee for conducting trust examinations to recover total expenses associated with those examinations. The fee will be recalculated each calendar year to reflect increases or decreases in such expenses.

EDP Examinations

The EDP Examinations Division has oversight responsibilities in the areas of examining and regulating national bank data centers and nonbank entities providing computer services to national banks. Special emphasis is given to supervising data processing operations which exhibit conditions that could jeopardize the integrity of the automated records or endanger the center's ability to operate. The division also provides technical counsel to senior management and other OCC divisions on all matters pertaining to data processing in banks.

In 1981, the division concentrated in the areas of research, industry liaison, planning, training and quality assurance. The creation of a full-time research and development position in 1980 made it possible for the division to participate extensively in the Bank Technology and Telecommunications (BaTT) Task Force. Much of the division's preliminary research laid the foundation for the task force assignment. As a result of that task force participation, the division issued a comprehensive position paper concerning the impact of technology on banking today and how it will impact banking over the next 5 to 10 years. The paper also addressed the impact of technology on bank examination and supervision. Additionally, frequent technical assistance was provided to other OCC units, and technical newsletters were periodically issued to assist field personnel.

Liaison with the data processing industry was significantly expanded in 1981 through participation in the national software reviews, vendor calling program and issues and standards groups. Numerous speeches and presentations were made to user groups, trade associations and data processing related conferences.

Cooperation with other regulatory agencies has continued with the development of common procedures for the consolidated examination of national servicers.

During 1981, the division effectively expanded emphasis on the planning process in data centers. Increased awareness was achieved through examinations and contacts with trade associations and user groups. Additionally, division staff participated in the working group which produced the OCC's *Strategic Plan* for the 1980's.

The data processing industry has experienced rapid changes in technology over the past 3 to 5 years. As a result, the division has consistently emphasized training to meet those changes. The division was instrumental in forming the Examiner Training Task Force in 1981 to evaluate current examiner training and to make recommendations for future OCC needs. Additionally, the EDP Education Committee reviewed current entry level training for EDP examining personnel and revised the certification process.

Quality assurance and problem data center monitoring have always been important parts of the EDP Examination Division's oversight responsibilities. As a result, the number of problem data centers declined significantly in 1981.

Aside from the contributions made to many of the OCC task forces established in 1981, EDP Examinations undertook a major training project directed toward regional management. That training represents a giant step forward in improving communications and mutual understanding between the regions and the division in Washington.

Consumer Examinations

The Consumer Examinations Division administers all consumer examination-related activities, including reviewing and analyzing examination reports, developing examination procedures and policies, monitoring national bank compliance with consumer laws and regulations and organizing consumer examiner trai-

ing and banker education programs. The division also coordinates and supervises the handling of all consumer complaints and inquiries.

In 1981, the division drafted, field tested and refined a pilot program for a complete revision of the consumer examination process to make it more efficient and responsive to supervisory priorities. The pilot program included creating examiner working tools, new examination procedures and a new report of examination all of which focus on substantive consumer law violations.

The division released several banking and examining issuances describing new or revised policies and procedures in response to legislative changes and changes in OCC's supervisory emphasis. Those included adjustable-rate mortgage regulation and examination procedures, new forms and instructions for compliance with Home Mortgage Disclosure Act amendments, examination instructions for reviewing the new tax exempt all-savers certificates and a complete update on current issuances of the Depository Institutions Deregulation Committee (DIDC). In addition, the division completed *A Banker's Guide to APR Calculations*, an update which was published by the American Bankers Association.

Through the Task Force on Consumer Compliance of the Federal Financial Institutions Examination Council (FFIEC), the division helped to develop uniform examination procedures for enforcing the Real Estate Settlement Procedures Act, the Flood Disaster Protection Act, the Right to Financial Privacy Act and the Fair Credit Reporting Act.

As a participant on the Annual Report Improvement Task Force, the division helped to standardize and improve the requests for information that the Federal Reserve Board sends to each financial regulatory agency. To obtain comparable compliance data from each agency, uniform informational requests were developed for the Truth-in-Lending Act, Equal Credit Opportunity Act, and Electronic Fund Transfer Act annual reports to Congress.

Memoranda were issued to regional administrators and regional directors for customer and community programs to provide additional guidance on specific supervisory policies and monitoring, such as Regulation Z reimbursement, compliance with DIDC issuances and proper adjustable-rate mortgage disclosures under the revised Regulation Z.

Approximately 440 general and 3,230 specialized consumer examinations of national banks were conducted in 1981. Copies of all reports of consumer examinations were sent to the Washington Office. A comprehensive review of reports by region was conducted to monitor their quality and the degree to which examiners evaluated compliance uniformly and provided constructive assistance to national banks. Regional directors for customer and community programs were given reports of common problems found in regional consumer examination reports.

The division operates two computer information systems that enhance the consumer examination process and allow examiner time to be focused on potential problem areas. The consumer examination information system stores information from the consumer reports of examination. Developed in 1977, the system allows analysis of national bank compliance with consumer, community and fair lending laws. Bank compliance with corrective action is monitored, and general compliance problems are analyzed to determine areas that require more scrutiny through special investigation. During 1981, a number of modifications were made to ensure compatibility with the new report of examination and to improve the accuracy and usefulness of the system.

The consumer complaint information system (CCIS) stores information by region, bank, type of complaint and resolution. Monthly reports are used by Washington and regional personnel to identify banks with concentrations and resolutions of complaints or types of complaints and to monitor unresolved complaints. That information is forwarded to consumer examiners to allow examinations to focus on potential problem areas. In addition, special reports of complaints by type of complaint are furnished to members of Congress with oversight responsibility for consumer protection.

During the first 9 months of 1981, 8,975 complaints were received in Washington and the regional offices, an 11 percent decrease from 1980. The number of complaints resolved totaled 7,237, representing a 10-day improvement in average resolution time. The division also completed a consumer complaint satisfaction survey covering complaints received in March 1981 and participated in a General Accounting Office review of consumer complaints.

The CCIS was modified to include expansion of the consumer complaint codes to note telephone complaints and complaints resulting in violations of law.

Examiners attend 2-week consumer schools conducted since July 1981 by the OCC's Personnel Development unit and formerly by the FFIEC. Personnel of the Consumer Examinations Division assisted in curriculum development and preparation of lesson plans and served as instructors at the schools. During the first half of 1981, 175 OCC students attended 10 schools conducted by the FFIEC. During the latter part of the year, the OCC held seven consumer compliance schools with 210 students attending. As part of the revised examination procedures pilot program, the division held three regional schools, two in Region 7 and one in Region 6, where the program has been field tested.

In 1981, division personnel participated as faculty members at the American Bankers Association's National Compliance School at the University of Oklahoma and at the American Institute of Banking and Bank Administration Institute's compliance seminars.

Consumer Supervisory Analysis

The Consumer Supervisory Analysis Division is responsible for OCC's programs involving compliance with fair lending and consumer protection laws and regulations. Those programs include enforcement activities for banks requiring more than normal supervisory attention, fair housing home loan data system and related examination activities and review of corporate applications when the applicants' compliance with those laws may be of concern.

In early 1981, the division implemented OCC's new policy for enforcing consumer protection and fair lending laws. That policy provides for administrative enforcement action in instances where there are serious compliance problems. The policy also provides for administrative action for less serious compliance problems when banks do not voluntarily take corrective action.

The division works closely with the Special Projects and Enforcement and Compliance divisions. During the year, seven administrative enforcement actions were used primarily for consumer compliance problems, and consumer compliance remedies were incorporated into more than 50 additional administrative enforcement documents where other concerns were the primary reason for the action. The division is also monitoring approximately 50 banks with compliance problems not subject to administrative enforcement actions.

In late 1981, OCC adopted a supplemental policy prescribing remedial corrective action for serious violations of the Fair Housing Act and the Equal Credit Opportunity Act. The division began implementing the policy prior to year-end.

The division also is responsible for monitoring enforcement activities under the Truth-in-Lending Act, which requires reimbursement of overcharges to bank customers. From January through November, 533 banks made reimbursements to approximately 54,000 customers, totaling $1.8 million.

In 1981, the division assumed responsibility for operating OCC's fair housing home loan data system. That computerized system analyzes information taken from home loan applications to identify apparent inconsistencies in bank lending decisions. The analysis is used during examinations to assist in determining compliance with the Fair Housing and Equal Credit Opportunity acts. During the last half of the year, the division staff began developing revised examination procedures and manuals for using the system more efficiently.

The division's responsibilities for reviewing corporate applications include analysis of bank activities in response to the Community Reinvestment Act (CRA) and compliance with laws and regulations. The CRA was enacted to encourage financial institutions to help meet the credit needs of their local communities consistent with safe and sound operations. OCC is required to assess each national bank's record of helping to meet the credit needs of its entire community and to take that record into account when deciding certain corporate applications.

In 1981, CRA examination procedures were performed during all consumer compliance examinations. The procedures are designed to determine and assess the bank's record of helping to meet the credit needs of its community. The record is considered in evaluating all applications of national banks to establish branches, relocate offices or merge.

The division reviewed 22 corporate applications referred by the Bank Organization and Structure Division because of unresolved CRA issues. Of those, 16 were ultimately approved, and two were disapproved, in whole or in part, because of unsatisfactory records of helping to meet community credit needs. Four were approved conditioned on developing an acceptable plan to improve performance.

In 1981, OCC, along with the other federal agencies with CRA supervisory responsibilities, distributed *A Citizens Guide to CRA*. That publication has plain English instructions for commenting on applications covered by CRA. In addition, OCC adopted the revised CRA performance rating system recommended by the FFIEC. The division staff assisted in drafting the rating system which provides guidance to examiners, the industry and the public on how OCC assesses bank performance.

Division staff assisted in developing a discrimination awareness training program which will be presented to OCC supervisory personnel in 1982. The program will help managerial employees understand and institutionalize equal opportunity goals and contribute to the accomplishment of the OCC internal equal employment and supervisory fair lending responsibilities.

As part of its enforcement and CRA responsibilities, the division directed supervisory visitations, reviewed the results of special investigations and identified specific areas requiring emphasis during regular examinations.

Division staff members participated in a number of agency- and industry-sponsored training schools in consumer, fair lending and community laws. Division personnel assisted the Consumer Examinations Division in developing and implementing a new consumer examination program to increase the effectiveness and efficiency of in-bank examinations.

Special Surveillance

The Deputy Comptroller for Special Surveillance is responsible for the national bank surveillance system (NBSS), the Special Projects Division and the Regional Bank Division, which is pending approval by the Department of the Treasury.

NBSS is a computerized screening system using call report data to detect trends warranting supervisory attention in individual banks and in the banking system. The NBSS Division is also responsible for the bank performance report, an analytical report produced for each national bank, and an action control system which monitors corrective action taken in banks where conditions warrant attention. The division reviews the performance of banks with assets of more than $1 billion (except those overseen by Multinational Banking) which have composite 1 ratings and provides training for using the bank performance report and related programs.

In 1980 and 1981, the extreme volatility in financial markets necessitated increased depth and quality of surveillance over national banks. The division acquired an on-line minicomputer system for use in the regional and Washington offices. The system allows greater flexibility in identifying banks impacted by the changing financial environment, permitting early supervisory attention.

In 1982, enhancements are planned to the NBSS on-line computer system to include more economic and financial modeling. That will be accomplished through

an expanded and improved data base which is planned to include all 15,000 banks nationwide, in addition to holding company and economic data. On-line monitoring and tracking capabilities for banks showing areas of concern will be investigated along with the feasibility of electronic submission of bank reports. Increased involvement in proposed task forces dealing with call report data and examination procedures will help in developing remote analysis techniques, scheduling bank examinations and improving analytical tools and techniques.

The Special Projects Division is the OCC's focal point for coordinating the supervision of banks which require increased attention. The overall goal of the program is to assist problem institutions in returning to a satisfactory condition. Among the division's chief responsibilities is the identification of banks requiring special supervisory attention. The division is charged with ensuring that such a bank's problems are analyzed, that the causes of those problems are identified and that corrective measures are taken. The division also monitors and participates in regional followup on the implementation of the corrective measures. Specifically, the program addresses real or potential problem situations which pose a threat to the health of a national bank, with the goal of returning each bank to a satisfactory condition. The division's program includes all banks with composite ratings of 3, 4 or 5, with the exception of banks overseen by the Multinational Banking Department. All banks operating under the requirements of a memorandum of understanding, a formal agreement or a cease and desist order are monitored, regardless of their composite ratings. Banks with inherent or suspected problems or those warranting closer review are also included. Finally, all regional banks with assets of more than $1 billion, exclusive of multinationals and those with a composite 1 rating, are part of the program.

The division is staffed by a group of seasoned national bank examiners experienced in dealing with unusual banking situations. If enforcement action is deemed necessary, the Chief Counsel's Enforcement and Compliance Division works closely with the Special Projects Division and the regional office in preparing legal documents and delivering them to bank directorates.

In 1981, the division coordinated 122 formal and informal administrative actions and supervised one bank closing and one voluntary liquidation which was followed by a purchase of assets and assumption of liabilities. Special Projects' examiners attended over 80 meetings with boards of directors of troubled institutions and represented the division in five administrative hearings. The division participated in OCC's continued development of the Regional Bank Program. Special Projects' personnel also frequently assisted in other OCC studies and task forces.

The newest initiative of the Deputy Comptroller for Special Surveillance is the Regional Bank Program, which is expected to be implemented in 1982. Because it will create a new division in the Washington Office, the program must be approved by the Department of the Treasury. The program is designed to respond to the increased risk in the banking system related to market volatility and interest rate and structural deregulation. OCC envisions that regional banks will become increasingly important in the financial environment over the next few years. The program will develop a deeper focus on banking institutions with assets of more than $1 billion which are not covered by the Multinational Department. The Regional Bank Program will use techniques similar to those employed by that department for onsite examinations, remote analysis and overall supervisory activities. Emphasis will be placed not only on the banking aspects of those organizations but on the entire corporate entity. The division will interact closely with the regional offices, which will serve as focal points in the program. The Washington Office has worked closely with the regions in developing their aspects of the program, and regional implementation is underway.

Once the division is staffed and functioning, it will relieve the NBSS and Special Projects divisions of their present responsibilities for regional banks and will provide a higher level of analysis and attention to that class of bank.

Federal Financial Institutions Examination Council

The Federal Financial Institutions Examination Council was established on March 10, 1979, pursuant to Public Law 95-630 and is composed of the principals of the three bank regulatory agencies (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the OCC), the Chairman of the Federal Home Loan Bank Board and the Chairman of the National Credit Union Administration.

The principal functions of the council are to establish uniform principles, standards and report forms for examining financial institutions; develop uniform reporting systems for federally supervised institutions, their holding companies and their subsidiaries; and conduct schools for examiners of the federal supervisory agencies.

To effectively administer those functional areas, interagency task forces for supervision, consumer compliance, reports, examiner education and surveillance meet regularly, as do numerous subcommittees of the task forces.

The council's achievements in 1981 included the following:

- Approval of a uniform enforcement policy guide under the Equal Credit Opportunity Act and the Fair Housing Act;
- Approval of a uniform Community Reinvestment Act (CRA) rating system—adopted by the three banking agencies;
- Publication of a CRA plain English handbook;
- Development of uniform examination procedures for the Real Estate Settlement Procedures Act;
- Development of uniform training courses in international, trust and consumer areas;
- Approval of mandatory accrual accounting for banks with less than $25 million in assets;

- Continued progress on a major revision of the reports of condition and income for commercial banks to be implemented with March 1983 reports;
- Approval of a definition of bank "capital" for capital adequacy purposes;
- Approval, for recommendation to Congress, of a package of "technical" amendments to the Financial Institutions Regulatory and Interest Rate Control Act of 1978;
- Approval of elimination of agencies' standard form reports of external crimes (P–2), and
- Approval of the uniform bank performance report content, completion of its development for March 1982 use, and approval of release to the public, on request, of those reports for individual banks.

The OCC will continue cooperative ventures with the other financial regulatory agencies through the council.

Research and Economic Programs

The Deputy Comptroller for Research and Economic Programs advises the Comptroller and senior OCC staff on policy formulation and supports the regulatory and supervisory operations of the Office through analyses of economic and financial conditions affecting the financial services industry. The Deputy Comptroller also supervises the activities of four divisions: Bank Organization and Structure, Banking Research and Economic Analysis, Regulations Analysis and Strategic Analysis.

The functional responsibilities of Research and Economic Programs include:

- Analyzing and processing applications for charters, structural changes and corporate activities of national banks;
- Providing economic and financial analysis and information in support of policy formulation;
- Initiating and implementing regulatory reform and simplification programs; and
- Providing analytical and technical support for regulatory and supervisory operations.

Functional responsibilities also include providing direction and support for interagency and interdivisional task forces and preparing or assisting in the preparation of speeches, testimony and staff papers.

Regulations Analysis

The Regulations Analysis Division assists in developing and implementing policy initiatives to reduce regulatory and supervisory burdens. The division seeks to measure costs and benefits of statutory and regulatory demands, to identify burdensome and outmoded statutes and regulations and to develop strategies for modifying or eliminating such statutes and regulations, and to offer alternative means of securing regulatory objectives. Work is guided, in part, by its responsibility to ensure OCC compliance with statutory and executive branch requirements governing regulatory and information collection processes.

In the area of regulatory reform, the division assisted in adopting:

- A new fee structure for trust examinations (12 CFR 8) and for a variety of corporate applications (12 CFR 5);
- New policies and procedures for processing applications for domestic branches, seasonal agencies, customer-bank communications terminals, change in location, and chartering of interim national banks (12 CFR 5);
- A new policy on the computation of bank capital for statutory and adequacy purposes (12 CFR 7.1100); and
- A new regulation affirmatively authorizing national banks to issue adjustable-rate mortgages (12 CFR 29).

The division also initiated steps assuring OCC compliance with the Paperwork Reduction Act of 1980. Recordkeeping and reporting requirements, collectively known as information collection requests (ICR's), borne by national banks were catalogued and their burden estimated. Nearly 140 ICR's covered by the act were submitted to the Office of Management and Budget (OMB) for approval and assignment of a number and expiration date.

The division used those submissions to prepare OCC's information collection budget, which is required by OMB under the Paperwork Reduction Act and shows on an item-by-item basis the estimates of time spent by national banks on the ICR's. The division also helped to develop program changes that will reduce the paperwork burden by nearly 10 percent.

Other significant activities included developing a comprehensive plan to review statutory and regulatory requirements administered by OCC. The plan calls for collecting deregulatory views from many sources, including the banking industry and the general public. Those views will help focus OCC regulatory reform proposals.

Division personnel also helped prepare background papers used to develop the strategic plan, reviewed and evaluated deregulatory proposals initiated by Customer and Community Programs, and reviewed and evaluated OCC replies to congressional inquiries.

Substantial staff time was devoted to preparing several mandatory reports on OCC regulatory actions. Those included two semiannual agenda (published April 15 and October 15 in the *Federal Register*), two reports for the Regulatory Information Service Center for publication in its semiannual regulatory calendar; a 10-year plan for reviewing regulations, as required by the Regulatory Flexibility Act, and an annual report of division operations for Congress.

Bank Organization and Structure

The Bank Organization and Structure Division analyzes and processes requests from national banks and individuals to engage in banking activities. Those requests include applications for new bank charters, branches, customer-bank communications terminals (CBCT's), head office and branch relocations, mergers and consolidations, title changes, operating subsidiaries, capital increases, federal branches and agencies of foreign banks, and notices of ownership changes. In addition, the division maintains the official national bank structure records, such as title, location, number of offices and amount of capital stock of each bank.

In 1981, the division made continued progress in meeting its goal of reducing application processing time, improving the quality of analysis and reducing the regulatory reporting and compliance requirements imposed on banks. With regional offices deciding more types of corporate filings, there was continued improvement in processing efficiency, despite increases in application volume.

Progress continues in the division's Corporate Applications Review and Evaluation (CARE) Program, a comprehensive and continuing review of all rules, policies, procedures and forms dealing with structural and corporate activity filings. That program is intended to deregulate OCC involvement to the maximum possible extent. This involves reducing costs and burdens on applicants, the OCC and the public, providing a better understanding of policies and modifying or eliminating rules, policies, procedures and forms which are unnecessary or lead to inefficiencies.

During 1981, the CARE Program accomplishments included:

- Implementation of a revised charter application form;
- Implementation of simplified procedures for processing charter applications filed solely to facilitate the corporate reorganization of an existing bank;
- Implementation of revised rules covering written comments and hearings on applications to encourage broad public participation and to eliminate the costs and delays associated with unnecessary hearings;
- Publication of proposed revisions to policies, rules and procedures covering applications for domestic and CBCT branches and head office and branch relocations to eliminate unnecessary regulatory review and to simplify and speed application processing.

Other subjects under review in the program included:

- Subordinated note and equity capital policies and applications processes;
- National bank title change policy; and
- Policy dealing with treatment of minority shareholders in merger proposals.

Program review and implementation will continue through 1982.

Banking Research and Economic Analysis

The Banking Research and Economic Analysis Division conducts economic research and policy analysis on issues of current and potential importance to the financial system and, in particular, to OCC's bank regulatory and supervisory mission. The division's economists provide senior officials with information and analyses on the state of the economy and on trends and interrelationships in the capital markets. In addition, the division provides analytical and statistical support to other OCC divisions on a wide range of subjects, conducts seminars on topics of current interest to the OCC and the banking industry, and collects, analyzes and makes available a wide range of financial and supervisory data reported by national banks.

In 1981, the division's major activities included preparing testimony and briefing materials for congressional hearings on banking issues such as the federal role in conventional home finance, adjustable-rate mortgages, the condition of the banking system and financial institution reform. The division also contributed to preparation of speeches for the Comptroller addressing the future of the financial services industry and the fundamental policy issues facing the U.S. banking and export sectors.

In conjunction with the Legal Advisory Services Division and Customer and Community Programs, the division developed an adjustable-rate mortgage (ARM) regulation which was issued on March 27, 1981. A provision of that regulation requires national banks to submit innovative mortgage plans, which do not fully comply with all of the requirements of the ARM regulation, to the OCC for review. Approximately 30 national banks submitted proposed payment-capped mortgage plans, and the division took the lead in analyzing the plans and in preparing responses to those national banks. The division also played a primary role in preparing a final regulation providing for an annual recalculation of trust exam fees based on expenses and billable hours. Furthermore, the staff, in conjunction with the Legal Advisory Services Division, prepared a proposed regulation to permit national banks to include and enforce due on sale clauses in mortgage contracts regardless of state prohibitions.

Research on the banking environment was undertaken in connection with OCC's strategic planning for the 1980's. Staff members also prepared papers on

topics such as bank loan rate indexation, effect of deposit rate ceilings on the market values of stock savings and loan associations, analysis of intraindustry differences in the effect of regulation and analysis of interest rate margins. The division regularly provided information to senior staff members regarding economic developments.

Division personnel provided expert assistance to other divisions for their operations, including work on the fair housing home loan data system to provide an analysis of differences in terms of lending, oversight of the Federal Deposit Insurance Corporation's call report processing to provide complete and timely data for the national bank surveillance system, entering and editing trust department performance data, providing computerized access to extensive data bases at both the Federal Deposit Insurance Corporation and the Federal Reserve Board, accurately projecting the Office's assessment income, and participating actively in providing more extensive and efficient automated data processing support for the Office through the Management Information Systems Committee.

Division personnel engaged in several interagency projects, including active participation in a small business financing study with the Federal Reserve Board, Federal Deposit Insurance Corporation, Small Business Administration and Bureau of the Census (study will be completed in early 1982) and active involvement in Depository Institutions Deregulation Committee activities. The division took the lead in 1981 in preparing two DIDC staff papers on a proposal to authorize a new short-term deposit instrument enabling banks and thrifts to better compete with money market funds.

Strategic Analysis

The Strategic Analysis Division engages in applied research on such topics as international banking, changing markets for financial services and technological innovation. The division also provides advice, technical assistance and consulting services to other OCC units in numerous areas where the division's financial analysts have special expertise.

During 1981, the division's research was primarily focused on a cooperative effort with an international group of bank supervisors, central bankers and commercial bankers to examine the management of international banking risks. In addition, the division played an important part in designing, organizing and supervising that project, which involved the efforts of numerous people in both Europe and the United States. Much of the research will be published in the OCC *Staff Paper* series in spring 1982.

The division's contributions to the agency's Bank Technology and Telecommunications Task Force, which originated with the division's initial monitoring of that area in 1979, continue to be important. Division personnel play a key role in both the organization and research of policy issues arising from developments in bank data processing and telecommunications technology.

Study of the growing importance of nonbank intermediaries as providers of financial services expanded in the latter part of 1981. That work promises to increase in importance as the effects of deregulation and changing customer demands make themselves felt. The division's role in monitoring that revolution in demands and delivery systems will be to assess the business and regulatory implications of those forces of change for banks.

Internal consulting and coordination with other OCC divisions were undertaken in a number of areas. Some of the most noteworthy were statutory restrictions on capital, automation of financial market news and stock market monitoring, legislative proposals for bank ownership of export trading companies, changes to the Federal Reserve and Glass-Steagall acts and strategic planning for the 1980's.

The division's research and analysis often contribute directly to the testimony and speeches of the OCC's senior officers and to the OCC's legislative initiatives in policy areas. Its research has also been publicly circulated in OCC staff papers and in articles published in professional journals. A book was published in 1981 that provided the division's comprehensive analysis of the foreign acquisition of U.S. banks, a research activity that constituted a major staff commitment in 1979-80.

Customer and Community Programs

The Office of Customer and Community Programs has examination, supervisory and policy responsibilities in consumer protection, community lending and fair lending. Major efforts were undertaken in 1981 to improve OCC's activities in those areas and to promote compliance with laws and regulations while reducing burdensome requirements on national banks. Early in 1981 the office reorganized to carry out its responsibilities more effectively. The Deputy Comptroller for Customer and Community Programs directs the of-

fice, which includes the Consumer Examinations Division, the Consumer Supervisory Analysis Division, the Community Development Division and the Special Assistant for Fair Lending.

Activities in 1981 included numerous contributions to legislative and interagency matters affecting customer and community concerns. The Deputy Comptroller represented OCC at congressional hearings on federal pre-emption of state usury laws and coordinated the Comptroller's testimony on proposals to restructure the financial services industry. The Assistant Deputy Comptroller represented the OCC on the Consumer Compliance Task Force of the Federal Financial Institutions Examinations Council (FFIEC). Both the Deputy Comptroller and the Assistant Deputy Comptroller were extensively involved in formulating OCC's strategic plan. The office also routinely reviewed all significant OCC actions with ramifications for consumers and the public.

The Office of Customer and Community Programs worked closely with the Banking Research and Economic Analysis and Legal Advisory Services divisions to prepare and administer the adjustable-rate mortgage regulation. The office also worked with those two divisions to develop standards for reviewing and approving payment-capped, adjustable-rate mortgage programs and for monitoring adjustable-rate mortgage lending by national banks. The office also co-sponsored research on the effects of alternative mortgage instruments on housing demand by potential homeowners.

Community Development

The Community Development Division helps banks to develop community investment programs, communicates with bankers, community groups and consumers about community development and consumer protection issues and formulates OCC consumer protection, fair lending and community lending policy.

During 1981, the division reviewed all consumer protection and fair lending laws and regulations that affect national banks to determine their effectiveness and whether their objectives can be achieved with less burdensome requirements. The review specifically focused on the major laws and regulations and options for legislative and regulatory improvements. The review will be a basis for meetings with bankers, consumers, other federal agencies and congressional representatives in 1982 to develop a consensus on streamlining and consolidating statutory and regulatory requirements.

Numerous research efforts were undertaken to provide bankers with tools to help develop programs for economic development and community reinvestment. Focusing on the particular challenges and opportunities of small banks in the Southeast, division personnel met with bankers, local officials and state agency representatives to develop case studies of main street revitalization, small business assistance and industrial development activities. Those case studies were the basis for a conference, "The Banker's Role in Small Communities," held in Atlanta, Ga., in May. Bankers described the risks and returns of their experiences, and the regional administrators and regional directors for customer and community programs for Regions 5, 6 and 8 led discussions with bankers on business development opportunities and techniques. An information sourcebook was distributed to all conference participants and all banks in Regions 5, 6 and 8.

Technical assistance was provided to banks that were creating community development corporations (CDC's), wholly owned subsidiaries through which banks can invest in community and economic development projects. Five bank-owned CDC's were approved in 1981. Technical assistance continued for CDC's approved in 1979 and 1980. The division also worked on guidelines for creating, approving and monitoring CDC's. Technical assistance was provided to banks interested in establishing industrial development departments, financing for commercial strip development, financing of cooperative housing, and strategies for mitigating mortgage delinquencies.

The division held several meetings with representatives of the Small Business Administration (SBA) to discuss national bank management of SBA loan portfolios. The division assists the SBA in developing options for monitoring techniques and sharing information reports.

Research was conducted on the unique legal and financial problems of cooperative housing, techniques for mitigating the rise in personal bankruptcies and for meeting the need for credit counseling, and special credit concerns of women as individuals and business owners.

Congressional testimony and responses to congressional requests for information were prepared on such topics as federal pre-emption of state usury laws, condominium conversions, consumer disclosures and the federal role in meeting small business and housing credit needs.

Speeches were delivered to a number of conferences on neighborhood reinvestment, small business financing, economic development and housing issues.

Fair Lending

The Special Assistant for Fair Lending coordinates and monitors the OCC fair lending supervisory activities. The Special Assistant handles major, unique or complex cases discovered through examination or complaint investigation. Special investigations may be conducted, or specific questions may be identified and investigated during the regular examination. The Special Assistant also assists in preparing materials and instructing examining personnel on statutory and judicial reasoning on complex fair lending issues.

In 1981, the Special Assistant helped revise the fair lending portion of the consumer examination process. The Special Assistant, working with the Effects Test Task Force, developed a research proposal for analyzing credit scoring systems and their potential effects on individuals protected by the fair lending laws. An effort was begun to provide examiners with housing and demographic data that will assist them in conducting fair lending examination activities which will be completed in 1982.

Legal Matters

Litigation

During 1981, 30 new lawsuits were filed against the OCC with 32 lawsuits pending at the beginning of the year. The subject matter of those lawsuits included challenges to OCC's decisions on charter, branch and name change applications and change in bank control notices, judicial review of administrative enforcement actions, OCC's regulatory authority, contract disputes, personnel matters, Racketeer Influenced and Corrupt Organizations Act, and mandamus actions. While the division has responsibility for antitrust litigation, no new lawsuits challenging OCC merger approvals were filed in 1981.

In the corporate applications area, one lawsuit involving the approval of a branch application was filed, with 10 such cases still pending. Of those 11 lawsuits, six were resolved during 1981—all in OCC's favor, including several appeals to the circuit courts. Similarly, three lawsuits challenging OCC's approval of charter applications were pending, with one additional case filed during the year. Two of those cases were concluded, both upholding OCC's decision. The division was also successful in defending a lawsuit involving the name change of a national bank, both in the trial court and before the court of appeals; a similar lawsuit is presently pending.

Two actions, one before an administrative law judge and the other before an Oklahoma district court, were filed against the OCC in connection with the Change in Bank Control Act. The ongoing administrative hearing challenges OCC's disapproval of a notice filed pursuant to the act while the other dispute involves an attempt by the bank to enjoin the Comptroller from reviewing the notice in an effort to defeat the proposed acquisition. The Office was successful in defending against the plaintiff's motion for preliminary injunction and is awaiting the court's decision on the merits of the case.

Several petitions were filed seeking judicial review of OCC final orders to cease and desist issued pursuant to 12 USC 1818, as well as a challenge to an administrative subpoena issued by the Office. Those orders addressed themselves to such matters as adequacy of a bank's capital, overinvestment in banking premises and indemnification of loans made in violation of 12 USC 84. In addition, three actions were brought to set aside temporary cease and desist orders pertaining to participation of loans among related banks and potential preferential loans to insiders. Those pending lawsuits also involve damage claims for alleged violations of constitutional rights.

In *Conference of State Bank Supervisors, et al.* v. *Heimann*, Civil Action No. 80-3284 (D. D.C.), plaintiffs unsuccessfully challenged in the district court regulations issued by OCC implementing the International Banking Act of 1978 (12 USC 3101 *et seq.*, 12 CFR 28). It was alleged that the regulations contravene the act by allowing foreign banks to operate at federal branches and agencies without regard to the entry requirements and the various operating restrictions and limitations that some states have chosen to impose on state branches and agencies of foreign banks. The district court rejected plaintiffs' contentions, ruling that (1) in chartering federal branches and agencies of foreign banks, the OCC need not take account of state law reciprocity requirements and other chartering standards, (2) interstate federal branches and agencies (*i.e.*, offices located outside the foreign bank's home state) are not bound by requirements and restrictions that states impose on state-chartered offices and (3) federal agencies can accept foreign source deposits. An appeal of that decision was recently filed in the District of Columbia Circuit Court of Appeals (No. 81-2256). Similar issues were raised in another action in Illinois against the OCC concerning chartering by the Comptroller of federal offices of an Australian bank. *People of the State of Illinois* v. *Lord, et al.*, Civil Action No. 81-C-4642 (N.D. Ill.). The case was subsequently transferred to the District of Columbia (No. 81-2641) and dismissed without prejudice.

The regulations issued by OCC relating to adjustable-rate mortgages are also the subject of a lawsuit filed by the Conference of State Bank Supervisors. *CSBS* v. *Lord*, Civil Action No. 81-1591 (D. D.C.). Those regulations, found at 12 CFR 29, authorize national banks to make and purchase adjustable-rate mortgage loans without regard to state law limitation on such loans. The plaintiff argues that the statutes upon which the regulations are based do not authorize pre-emption of state law and requests the court to permanently enjoin the implementation of the regulations, although no immediate relief was requested. The OCC's position is that state restrictions on real estate lending, like all state restrictions on banking powers granted to national banks by Congress without deference to state law, are inapplicable to national banks. Moreover, since the regulations are within the power granted the Comptroller, they, as federal law, pre-empt any contrary state law. The OCC is awaiting the court's decision on its motion for summary judgment.

The U.S. Court of Appeals for the District of Columbia Circuit upheld a lower court's dismissal of a complaint which sought a judicial declaration that removal proceedings conducted pursuant to the Financial Institutions Supervisory Act of 1966 before the Federal Reserve Board were unconstitutional. The complaint in *Roussel* v. *Comptroller of the Currency, et al.*, Civil Action No. 80-1079 (D. D.C.), alleged that the removal proceedings were improper since the Comptroller sat as a member of the Federal Reserve Board which issued the order barring the plaintiff from participating in any manner in the conduct of the affairs of the bank, after the Comptroller, in his investigative capacity, made a recommendation to the Federal Reserve Board for removal based on his opinion of the facts in the case. Plaintiff had filed a similar complaint 4 years

prior but had dropped the lawsuit, signing a consent order agreeing to waive all further lawsuits and resign from the board of the bank. The court determined that consent order was a bar to the present litigation and that plaintiff's only possible course of action was to seek a modification of the order from the Federal Reserve Board.

The Comptroller's Office was successful in *Gordon* v. *Heimann*, Civil Action No. C81-288A (N.D. Ga.), on its motion for award of attorney fees, grounded on bad faith conduct, against plaintiff and his attorneys who have filed nine lawsuits against the OCC and its employees on the same set of facts. A similar motion is presently pending in *Gordon* v. *Pannell, et al.*, Civil Action No. 80-8297-Civ-Ca (S.D. Fla.).

The OCC participated as an *amicus* in two lawsuits during 1981. In *Gulf Federal Savings and Loan Association* v. *Federal Home Loan Bank Board*, 651 F.2d 259 (5th Cir. 1981), the Fifth Circuit Court of Appeals reversed the Federal Home Loan Bank Board's finding that a cease and desist order should be issued against a savings and loan association which required the association to cease and desist from calculating interest under the 365/360 method when loan contracts called for the 365/365 method. The court held that the failure to follow the proper method was not an "unsafe or unsound practice" as, in the court's opinion, "unsafe or unsound" practices refer only to those practices which threaten the financial integrity of the association. The court specifically found that the

> breadth of the 'unsafe or unsound practice' formula is restricted by its limitation to practices with a reasonably direct effect on an association's financial soundness.

Securities and Corporate Practices

The Securities and Corporate Practices Division (formerly the Securities Disclosure Division) is responsible for administering and enforcing the federal securities laws which affect national banks, including the Securities Exchange Act of 1934 and the OCC's Securities Exchange Act disclosure rules. The division also administers and enforces the OCC's securities offering disclosure rules which apply to a national bank's offering of its securities. Legal advice is provided on certain provisions of the Glass-Steagall Act which relate to securities underwriting and dealing activities of banks, as well as provisions of the OCC's trust regulations which involve securities matters. In addition, interpretive advice is provided on the Change in Bank Control Act of 1978 and certain provisions of the banking laws which concern the corporate practices of national banks.

During 1981, the division, in conjunction with the Chief National Bank Examiner's office, developed guidelines for national banks operating so-called retail repurchase agreement (retail repo) programs, which typically involve the "sale" by a bank to a customer of an "interest" in a U.S. government or agency security (the "sale" is for a denomination of less than $100,000) with an agreement by the bank to "repurchase" the interest at a date not more than 89 days in the future. Such programs are generally intended to offer an instrument to the retail banking public which provides a yield roughly competitive with the yields available on certain short-term instruments offered by nonbank competitors. The guidelines, which are in OCC Banking Circular No. 157, address a number of banking and securities law issues and supervisory concerns raised by retail repo programs. The division also provided assistance to the staff of the Securities and Exchange Commission (SEC) in connection with an SEC release regarding the status of retail repo programs under the statutes administered by the SEC.

Together with other units in the Law Department, the division worked closely with the Solicitor General's Office, the SEC and the other federal bank regulatory agencies in preparing a brief submitted by the United States as *amicus curiae* in a Supreme Court case, *Marine Bank* v. *Weaver*, No. 80-1562. The brief argues that a certificate of deposit issued by a federally regulated bank is generally not a "security" for purposes of the federal securities laws. The Supreme Court heard oral arguments in that case in January 1982.

Approximately 320 "publicly held" national banks have a class of equity securities registered under the Securities Exchange Act. The division reviewed numerous registration statements, annual and special meeting proxy materials, tender offer and election contest materials, periodic reports and statements of beneficial ownership relating to such registered banks under the OCC's Securities Exchange Act disclosure rules (12 CFR 11). In addition, as part of the OCC's merger application procedures, the division reviewed numerous special meeting proxy materials relating to mergers and consolidations involving national banks. The division also processed offering materials of approximately 120 national banks pursuant to the OCC's securities offering disclosure rules (12 CFR 16).

In January 1981, the OCC published certain final amendments to the Securities Exchange Act disclosure rules to correspond with rules and regulations adopted by the SEC concerning proxy requirements, regulation of tender offers and an exemption from the "short swing" profit prohibitions of the act for insider securities purchases made pursuant to dividend reinvestment plans. The OCC also published proposed amendments to such rules relating to the form and content of financial statements of national banks. The amendments generally contain less burdensome disclosure requirements for financial statements than presently exist. Pending adoption of the final rules, national banks have been given the option of following the proposed or the existing regulation.

The division worked closely with the Trust Examinations Division in evaluating proposed amendments to the OCC's trust regulation (12 CFR 9) in a number of areas of common interest. Those proposals relate to, among other things, the policies and practices of national banks in selecting brokers to effect securities transactions for customers and certain requirements which apply to the collective investment of funds by a national bank in its fiduciary capacity. Consideration is also being given to a comprehensive review of the OCC's collective investment fund requirements.

The division has conducted a number of investigations involving possible violations of the federal securities laws. Those investigations relate to, among other things, insider trading, violations of the tender offer requirements of the Securities Exchange Act and the OCC's Securities Exchange Act disclosure rules, and violations of certain Municipal Securities Rulemaking Board rules. The division worked with the SEC in a number of those investigations.

The division participated in preparing the OCC's comments on legislative initiatives to amend the Glass-Steagall Act and certain provisions of the federal securities laws to permit national banks to engage in a broader range of securities-related activities. In addition, the division worked with other Law Department divisions to prepare the OCC's initial report to Congress on the first 2 years of the administration of the Change in Bank Control Act.

Legislative Counsel

The Office of Legislative Counsel provides legal advice to agency officials on proposed legislation affecting banking and bank supervision. A primary responsibility of the division is preparing testimony to be delivered by the Comptroller or his designated representative before congressional committees. Division attorneys also prepare briefing papers on legislative proposals, participate in formulating agency positions on pending bills in response to congressional requests and draft legislation to be introduced on behalf of the agency. The division maintains information on the status of bills, hearings, congressional reports, certain press information and other primary legislative resource material.

Attorneys are in frequent contact with members of Congress and their staffs, Department of the Treasury, Office of Management and Budget, other federal and state agencies and public representatives regarding banking-related legislation. Division attorneys occasionally address groups, including bankers' associations, bank counsel and OCC staff members on legal and legislative matters.

During 1981, the division prepared testimony on the following legislative matters:

- Proposed export trading company legislation;
- Legal and regulatory strictures governing the activities of financial institutions, focusing on competitive issues, supervisory matters and structure of the regulatory system;
- Proposed federal legislation to pre-empt state usury ceilings;
- Adjustable-rate mortgages and the federal role in conventional home finance;
- OCC's Bank Secrecy Act compliance efforts;
- Comprehensive financial reform legislation, addressing such matters as expanded thrift asset and liability powers, extraordinary supervisory authority, bank securities activities, national bank borrowing and lending limitations, real estate lending powers of national banks, truth-in-lending amendments, international banking facilities, and consolidation of the deposit insurance funds.

The following new laws affecting national banks were enacted during the first session of the 97th Congress (1981):

- Cash Discount Act, Public Law 97-25 (July 27, 1981), which eases restrictions on the offering of cash discounts while continuing the ban on credit card surcharges, extends the amended civil liability provisions of the Truth-in-Lending Act to those creditors who voluntarily comply with the new requirements before their effective date, and permits national banks to continue holding certain real estate until December 31, 1982, if separate disclosures are made on the banks' financial statements;
- Economic Recovery Tax Act of 1981, Public Law 97-34 (August 13, 1981), which contains provisions affecting commercial banks' reserves for possible loan losses, offering of individual retirement accounts and Keogh plans, and offering of all-savers certificates;
- Omnibus Budget Reconcilation Act of 1981, Public Law 97-35 (August 13, 1981), which affects eligibility requirements under the Guaranteed Student Loan and the parent loan programs and origination fees on student loans and amends state usury pre-emption provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980 to include residential manufactured homes; and
- International Banking Facility Deposit Insurance Act, Public Law 97-110 (December 26, 1981) which exempts deposits in international banking facilities from federal deposit insurance requirements, delays the effective date of certain provisions of the Truth-in-Lending Simplification Act until October 1, 1982, permits grandfathered interlocking management and directorate relationships to continue until November 10, 1988, despite changes in certain competitive circumstances, and allows management officials of companies which become diversified savings and loan holding companies to retain positions with other nonaffiliated depository institutions.

Legal Advisory Services

The Legal Advisory Services Division renders opinions concerning the laws governing national banks, *e.g.*, the National Bank Act, the Federal Reserve Act, the Bank Holding Company Act, and the state banking and trust laws. The division also provides counsel on legal questions arising from the Office's operations. Those questions range from administrative law matters to questions on equal employment and procurement law.

In addition to rendering legal advice to the Office the division prepares, or assists in the preparation of many of the Office's regulations and interpretive rulings. Supplementing that general guidance, the division annually prepares approximately 1,500 opinion

letters in response to written inquiries from the public, mainly national banks and their counsel and members of Congress. The division also issues annually approximately 3,000 written responses to consumer complaints. Division personnel give informal oral responses to a far greater number of telephone inquiries from banks, their counsel and the general public.

During 1981, the division helped review and draft rulings and regulations published in the *Federal Register*. It drafted final regulations authorizing national banks to make adjustable-rate mortgage loans (12 CFR 29, 46 FR 18932). It also drafted final regulations raising fees for trust examinations (12 CFR 8, 46 FR 16663) and corporate applications (12 CFR 5, 46 FR 16656). The division solicited comments from industry and the public on proposed regulations and rulings covering the eligibility of investment securities for underwriting, dealing in and purchase by national banks (12 CFR 1, 46 FR 12978), the definition of capital and surplus for both capital adequacy and certain statutory purposes (12 CFR 7.1100, 46 FR 40520), and the enforceability of due-on-sale clauses (12 CFR 30, 46 FR 46964). In addition, the division continued participation in the review of regulations regarding management official interlocks (12 CFR 26), other real estate owned (12 CFR 7.3025), indemnification of officers, directors and employees by national banks (12 CFR 7.5217), data processing services (12 CFR 7.3500), semiannual assessment schedule (12 CFR 8) and Office rules and procedures governing corporate activities of national banks (12 CFR 4,5).

Division attorneys spent considerable time addressing issues pertaining to the permissible activities of national banks, including such topics as the offering of innovative liability products designed to compete with nonbank competitors such as money market mutual funds. The division also considered the questions of whether a national bank can acquire a failing savings and loan association and whether a savings and loan can convert to a national bank. Attorneys frequently were asked to interpret statutory provisions regarding geographic constraints on national bank activities. There were also a significant number of inquiries on the statutory lending and borrowing limits applicable to national banks. There was a comprehensive review of those limitations with a view to possible legislative reform.

Attorneys also worked on issues regarding bank mergers and acquisitions, bankers' acceptances, consumer protection and civil rights laws, activities of the Depository Institutions Deregulation Committee, electronic funds transfer systems, and trust and securities activities of national banks. Other major areas of concern were questions on the Freedom of Information Act, privacy statutes, administrative law, and contracts and leases for the Office. The division continued to release monthly significant letter rulings.

The division's paralegal unit primarily responded to complaints received from consumers, consumer groups and congressional offices. The inquiries pertained to all aspects of retail banking activities, including credit denials, billing disputes and deposit agreements.

Enforcement and Compliance

The Enforcement and Compliance Division is responsible for, among other things, working with the operations side of the OCC in monitoring problem banks and suggesting remedies for eliminating problems. In effecting those remedies, the division is called upon to investigate the more sensitive and complex violations of law and unsafe and unsound banking practices occurring in the national banking system. The division's principal responsibilities are implementing the appropriate remedial and administrative actions and representing the OCC at administrative hearings and on appeals when the banks or individuals seek to litigate or contest a formal administrative action.

During 1981, the OCC conducted 128 formal or informal administrative actions. Some of the actions required, among other things, the following remedies to eliminate unsafe and unsound practices or violations of law:

- Hiring of new bank officers or appointment of independent directors;
- Elimination, correction and establishment of procedures to prevent violations of laws, rules and regulations, including those dealing with trust, securities and consumer violations;
- Establishment of independent counsel or committees to investigate and report on questionable situations or transactions;
- Prohibition against extending credit to certain parties or companies or preferential transactions with insiders;
- Limitation of the lending and investment authority of bank officers;
- Increase in equity capital and maintenance of capital positions sufficient to support bank operations;
- Submission of plans to sell or merge if bank was unable to generate sufficient equity capital to support bank operations;
- Review of adequacy and competency of management and staff;
- Restitution for preferential loans, excessive salaries and bonuses, travel and entertainment expenses, credit life insurance premiums, overcharges relating to violations of consumer laws, and losses in connection with violations of 12 USC 84, 375a and 375b; and
- Development of plans and programs for earnings, funds management, liquidity, internal controls and contracts of interest.

In addition to cease and desist proceedings, the division reviewed a number of recommendations for imposition of civil money penalties. Penalties totaling $106,000 were assessed against 3 banks and 21 individuals. The judicious use of the civil money penalty process as a supervisory tool has led to substantial corrective actions in many financial institutions and has acted as a deterrent to future violations.

The division participated in several examinations and investigations leading to referrals to the Department of Justice and other state and federal investigatory and prosecutorial agencies concerning bank

frauds. The division also provided legal assistance and expert testimony in investigations and prosecutions of those and other bank fraud cases.

In light of the proliferation of fraudulent schemes by offshore shell banks and money brokers, the division continued working with foreign bank supervisors and investigating and prosecuting agencies worldwide to establish a coordinated effort to address the problem.

The division conducted two seminars to give national bank examiners and representatives of other regulatory agencies training in the investigation, documentation and reporting of fraudulent transactions identified in financial institutions. Work continued on the white-collar training course given at the Federal Law Enforcement Training Center in Glynco, Ga., with instruction provided on bank frauds and on investigations using bank records.

In conjunction with two unrelated cases, the division in addition to initiating cease and desist administrative actions, started formal removal actions pursuant to 12 USC 1818(e). Both removal actions were brought for insider transactions: in one case against the president and chairman of the board and, in another, against the bank president. As a result of the actions, each individual resigned rather than litigate the matter. In one case, OCC referred the matter to the U.S. Attorney's Office, which obtained indictments against two individuals who are now being prosecuted.

The division was involved in several litigated administrative actions during the year. In three cases handled by the division, the OCC brought administrative actions against three closely related national banks. In those actions, the OCC alleged, among other things, that under common ownership and management the banks had generated a large volume of poor quality loans; had sold participations in those loans among themselves; and had engaged in other unsafe and unsound practices and violations of laws. One bank consented to a final cease and desist order and two of the banks litigated the allegations in separate administrative hearings before administrative law judges. Both cases are awaiting the recommended decisions of the administrative law judges.

Other cases continue as subjects of litigation. In one case, the U.S. Court of Appeals for the Second Circuit (in an unpublished opinion) upheld an administrative order issued by the Comptroller requiring the bank (1) to raise additional equity capital, (2) to correct an illegal investment in banking facilities (12 USC 371d), which was concealed through a sham lease agreement. The bank and the officers appealed the case to the Supreme Court, which denied *certiorari*, 50 USLW 3376 (Nov. 9, 1981, No. 81-322). After the Court of Appeals had affirmed the Comptroller's order and denied a petition for a rehearing, the Bank and several officers requested that the Comptroller modify the capital and Section 371d provisions of the order. The Comptroller modified the order, reducing the specific amount of capital needed to be injected, but required the bank to maintain a specific level of capital to assets. The bank and the officers once again appealed the Comptroller's ruling, this time both to the U.S. District Court and the Court of Appeals in the District of Columbia. The District Court denied the bank's motion for a stay of the proceedings and dismissed the appeal for lack of subject matter jurisdiction. The Court of Appeals, at the OCC's request, transferred the case to the Court of Appeals for the Second Circuit where it is again pending.

In another case, after a full administrative hearing, the administrative law judge found, among other things, that the bank had violated a written condition requiring the bank to raise capital which was imposed by the Comptroller when he approved the bank's application to relocate its main office. The administrative law judge found that although the bank's asset, earnings and management conditions were generally good, it was operating with inadequate capital (equity capital equalled 5.28 percent of total assets), and was in an unsafe and unsound condition. The Comptroller issued a decision and a final order adopting the findings and recommendations of the administrative law judge. The bank has appealed the case to the U.S. Court of Appeals for the Fifth Circuit.

In another case the Comptroller issued an order against the directors of a national bank requiring them, in their individual capacities, to reimburse their bank for losses incurred on loans they approved in violation of 12 USC 84. The case involved three loans: the first being unsecured and legal when made; the second being unsecured and in violation of the bank's lending limit; and the third being secured and also in violation of the bank's lending limit. Although the three loans were made to three different parties, the proceeds of each were used for the benefit of a single corporation; therefore, the Comptroller concluded that the three loans were properly combined pursuant to 12 USC 84. In attempting to collect the loans, the bank foreclosed on the security for the third loan and offset the second party's checking account against the second loan. Thus, the bulk of the loss occurred on the first loan. Although the first loan was legal when made and although the amount of the two illegal loans determined the total limit of the directors' liability, the Comptroller held that the directors' liability was not extinguished until the entire line of credit was paid off. Consequently, the Comptroller held that the directors were liable for all losses sustained on the line of credit—up to the limit of their liability as established by Section 84. That approach avoided promoting a conflict between the directors' fiduciary duties and the best interests of the bank, since the board is encouraged to maximize recoveries on an excessive line of credit without regard to whether a particular recovery would be applied to a legal or illegal loan. The directors were also held liable for all interest lost and expenses sustained by the bank resulting from the two illegal loans. In a related but separate issue, the Comptroller held that the directors were required to idemnify the bank for any attorney fees for representation of individual directors but paid by the bank.

In another case, the division seeks to compel a bank to divest itself of corporate stock it acquired for debts previously contracted and held by the bank for an unreasonable length of time. An administrative hearing has been held on the case and a decision is now pending before the administrative law judge.

Administration

Management Services

The Management Services Division has five branches Facilities Management, Procurement and Contracting, Records Management and Distribution Services, Research and Administrative Systems, and Supply and Printing Services.

In 1981, the Office of the Director for the Management Services Division participated on two significant task forces: a task force consisting of bureaus under the Department of the Treasury to recommend solutions to General Services Administration problems and a task force to study lease versus purchase of real estate for the OCC.

Before management of word processing for the Washington Office was transferred to Program Analysis, Management Services prepared a proposal to procure a minicomputer system to supply word and data processing. That proposal was presented to the OCC Management Information Systems (MIS) Subcommittee and purchase was later approved.

The office also continued refinements to the policy group reporting system, including the addition of equal employment opportunity data.

The Facilities Management Branch is responsible for renovating and relocating the OCC's offices and coordinating parking, telephones, property and leases. In 1981, the branch completed renovation of the Washington Office, including installation of an energy conserving cooling system in the Systems and Data Processing Division. Relocation of the Boston, Mass., regional office was completed on schedule and within budgetary limits. Initial planning began on relocating the Denver, Colo., office. The branch also coordinated the placement and installation of word processing equipment.

The Procurement and Contracting Branch is responsible for purchasing goods and services for the Washington Office and the regional offices. In 1981, the branch processed over 1,000 requisitions for a total dollar value of over $4 million. The branch, working in conjunction with the Finance and Planning Division, redesigned the purchase requisition form to permit better control during processing. Finally, the branch participated on a task force with Budget Programs to study tracking of procurement requisitions, with an automated tracking system expected to be tested in 1982.

The Records Management and Distribution Services Branch is responsible for mail and messenger service, bank records and records management. In 1981, the Mail and Messenger Section processed an estimated 350,000 mail items. Automotive fuel consumption and commercial courier costs have been reduced despite a significant increase in interagency deliveries. Central Records processed almost 8,000 requests for bank organization information. A quarterly reporting system for current copy production was introduced as part of a new copy management program.

The Research and Administrative Systems Branch is responsible for paperwork management, graphics design, OCC library and administrative systems. In September 1981, the branch was also given the responsibility for all OCC emergency preparedness activities. The Graphics unit acquired a photo typesetting system that will save time and money.

The Supply and Printing Services Branch provides printing, supply operations and bulk mailing for the Office. In 1981, the branch processed 542 regional requests for supplies and 1,444 requests for reproduction, which included staff papers, brochures and the new consumer complaint forms. A total of 14,544,813 impressions were printed and the branch shipped 113,067 pounds of supplies to the regional offices. The branch also participated in a task force to study the feasibility of automating the inventory system.

Systems and Data Processing

As in previous years, 1981 computer processing requirements grew at a rapid pace. However, in the face of expanding requirements, computer costs were maintained at $300,000 below the 1981 budget.

Major projects during 1981 were:

- Production of OCC's national bank surveillance system, which produced quarterly bank performance reports on time for all national banks, all Federal Reserve member banks and all large state nonmember Federal Deposit Insurance Corporation (FDIC) banks and FDIC banks in New York, Virginia and Nevada;
- Moving the national bank surveillance video display system services from a contractor who had failed to perform work to a new contractor who could provide better support;
- Development and implementation of an on-line position control system;
- Development and implementation of an on-line Bank Organization and Structure Division application tracking system;
- Development and implementation of an on-line foreign exposure system;
- Installation of a data base management system for a VAX 11/780 computer;
- Installation and implementation of the new computer printing system;
- Successful operation of a new minicomputer system which supports the processing of personnel, payroll, and time and attendance data.
- Development of a human resources information system;
- Development and implementation of a new compensation and merit performance system, and
- Continued support of the bank simulation model as a training aid for bank examiners.

Program Analysis

The Program Analysis Division was established in 1980 to provide the Senior Deputy Comptroller for Operations and other OCC senior managers with a means for ensuring that the agency's regulatory mandates are achieved in an effective and efficient manner. The division's divided into three functional groups: Management Analysis, Program Evaluation, and MIS Coordination. During the second half of 1981, the division approached full staff for the first time.

Through organizational surveys, work flow analyses and productivity studies, the Management Analysis group provides in-house consultant services for all OCC operating divisions, regional offices and field personnel. Major projects completed in 1981 included the consolidation of two regions, an organization study of the Atlanta, Ga., regional office, and pilot studies on telecommunications and combined examination report processing.

The Program Evaluation group evaluates OCC programs to determine if their objectives are being met. The group is staffed by national bank examiners who have the training and experience necessary to evaluate the effectiveness of bank supervisory and administrative programs. During 1981 the group began evaluations of the OCC's administration of job-related expenses, the revised consumer examination procedures and the financial market information received by the agency.

The MIS Coordination group is responsible for daily management of the OCC's procedures for selecting new data processing and word processing systems. That responsibility often involves acting as liaison between system users and inhouse and contracted technicians. A current project is the formulation of an effective 5-year MIS plan for the OCC. That plan will evolve from both internal considerations developed through the MIS coordinator and the Director of Program Analysis and a detailed study performed by a certified public accounting firm. The MIS coordinator also serves as the Secretary to the MIS Committee, which includes senior management and is responsible for meeting the data processing needs of the agency.

The division also has overall responsibility for word processing, including formulation and implementation of an agency-wide word processing plan and development of overall office automation. During 1981, installation of word processing equipment in all of the regional offices was completed, all divisions in the Washington Office were provided access to equipment; operator training was provided; and a standardized report package for banking operations was developed.

The division plays an important role in policy development through participation on various committees and task forces. Work on issue papers and other information as part of the OCC's strategic planning efforts was the division's most significant accomplishment during 1981. Through involvement on the Reports Task Force of the Federal Financial Institutions Examination Council, the division coordinates and directs call report matters, and division management personnel currently have policymaking roles on both the MIS Committee and the subcommittee. They also contribute to the policy decisions of the Bank Technology Steering Committee formed to improve the OCC's understanding of the many technology related issues now impacting the financial services industry.

Finance and Planning

The Finance and Planning Division promotes maximum use of financial resources for the OCC. The division has three branches: Operations Planning, Budget Programs and Accounting Programs.

Operations Planning provides functional direction and guidance in designing, implementing, maintaining, evaluating and extending feedback on the OCC's planning process, while ensuring coordination with the budgeting process. During 1981, the operations planning and the execution performance appraisal processes were integrated. That strengthened the planning effort and eliminated the duplication of preparing separate planning and appraisal documents. The development of the OCC's *Strategic Plan* for the 1980's in 1981 further emphasized the commitment to planning. The strategic plan provides a long-range systematic approach for the OCC to accomplish its mission. The OCC's executive planning and appraisal process provides the framework by which goals, objectives and strategies enumerated in the strategic plan are individualized and tailored into specific performance objectives, sub-objectives and standards. Through the performance appraisal reviews, managers' plans are monitored for achievements.

Budget Programs develops and recommends expenditure policy and designs cost models to direct the OCC budget operation. In 1981, refinements and enhancements to the formal budget process made the federal and the OCC budgets more compatible and provided a broader base for trend analysis. Additionally, a program to develop an integrated procurement accounts payable tracking system was initiated. That system will provide computerized tracking of requisitions through the budget approval, procurement and accounts payable processes until final payment has been made. Work began on an operating manual which would establish formal systems for internal budgetary procedures. The OCC also moved to reporting based on major expense categories to bring about better budgetary control, provide more flexibility for managers, streamline the budget process and make the operating and capital budgets more responsive. Further streamlining of the budget change process will reduce the turnaround time and increase the flexibility.

Accounting Programs is charged with managing the OCC's financial reporting. The economic and fiscal restraints imposed during 1981 have required further advances in the automation and refinement of accounting programs. The mileage reporting system was automated to provide more precise information on mileage claims by employees. Automation of travel and payroll accruals and W-2 preparation for relocations were implemented. Those automated systems will enhance management's forecasting techniques by expediting the flow of information and minimizing human error and paperwork.

The increased number of banks paying assessments by electronic funds transfer enhanced 1981's investment income as did better cash management techniques. Public obligations and employee travel expense voucher payments were scheduled to coincide with biweekly payroll dates, and OCC investments were scheduled to mature on those dates. Those actions significantly reduced the balance of uninvested cash accounts.

Human Resources

The Human Resources Division developed and implemented viable and progressive programs enabling OCC to recruit, develop, retain and effectively manage a highly skilled workforce.

The major accomplishment of the division was implementing a new compensation program which is competitive with the banking industry and which represents a departure from the traditional federal salary administration. That program includes a performance appraisal system that provides standards for all positions and functions, linking merit pay to actual performance.

Policies and procedures were developed to tailor new federal laws and regulations to the needs of the OCC and to provide for consistent treatment of employees. Policy developmet efforts were primarily in the areas of performance appraisal, incentive awards, job-related expenses, merit promotion, overtime and personnel development. A mortgage rate differential program was developed, approved and implemented to encourage workforce mobility and to offset the economic hardship of relocation. An Employee Consultation and Referral Program was designed and implemented to furnish counseling and rehabilitation services to troubled employees to diminish the effect of personal problems on productivity.

Training programs were administered to ensure progressive development and maximum use of managers, bank examiners, lawyers and administrative staff. Approximately 1,085 participants attended 120 ongoing and pilot training programs. Additionally, 746 participants were trained through Federal Financial Institutions Examination Council programs and 891 participants through outside facilities. An Executive Career Development Program was designed and implemented, and a task force redesigned the technical training curriculum for examiners.

The division participated in the formulation of policies affecting organization planning and design. The division integrated the senior executive service performance appraisal and operations planning systems. The consolidation of those functions provides the basis for systematic monitoring of progress toward organizational goals and fosters accountability. A model was developed for testing the validity of planning projections for staff resources, and a management by objectives time utilization management tracking system was introduced. Once formulation of the strategic plan was completed, Human Resources actively participated in incorporating those goals and performance objectives into the operating plans. Human Resources assistance was also provided to Finance and Planning, Customer and Community Programs, Mail and Messenger and the Atlanta, Ga., regional office in structuring reorganization plans to more efficiently use their personnel in the face of hiring freezes and ceiling constraints.

The division concentrated on improving productivity by streamlining existing systems, reexamining the efficiency of workflow and exploring means for greater use of technology. Significant progress was made in processing personnel actions and in streamlining and enhancing automated data systems. Personnel actions increased by over 170 percent, and a high quality of performance was maintained despite a 33 percent decrease in staff. An automated position control system was designed and implemented to assist in recruiting for 287 positions.

The division expanded outreach with other organizational units in the OCC and with public and private sector organizations. Three personnel management evaluations were conducted to provide assistance and identify opportunities for continued improvement. The division participated in task force groups on affirmative action, budget review, time utilization management system, interagency training and quality of working life matters. Liaison with the regional offices was strengthened through more visits and more frequent distribution of policy proposals for comment.

Equal Employment Opportunity

In 1981, the OCC made a number of significant accomplishments in its Federal Equal Opportunity Recruitment (FEORP) programs, and continued to host the FEORP clearinghouse meetings. The clearinghouse was established, under the Civil Service Reform Act to assist recruitment of minorities and women.

Minority/women goals for regional and Washington offices were issued. Those goals formed a key element of the recruitment program.

The recruitment resources information system (RIS), which was created to assist offices in meeting recruitment goals, was further refined to meet the needs of the Office. The system has addresses of minority, women, veterans and handicapped organizations which have agreed to act as recruitment resources and is used for mailing vacancy announcements for OCC positions.

The job skills bank, which the OCC and the Department of Health and Human Services (Administration for Native Americans) agreed to design and establish in late 1980, was developed for American Indian applicants seeking federal employment. However, the system was designed to be used for all persons. It was field tested before becoming operational.

The OCC handicapped program was involved in the International Year of Disabled Persons (IYDP) programs and activities. The OCC conducted ongoing reviews of architectural barriers, maintained close contacts with handicapped and veterans organizations for community outreach and recruitment through RIS and FEORP

clearinghouse activities, and actively supported OCC handicapped employees by encouraging them to participate in programs of achievement and recognition, both personal and professional

There were seven formal complaints filed in 1981 two alleged sex discrimination, two alleged race/sex discrimination, one alleged race discrimination, one alleged color discrimination and one alleged handicap discrimination. All alleged sex and race/sex discrimination complaints were formally closed. As of December 1981, the alleged color complaint has been reviewed by the Department of the Treasury, and the alleged handicap and alleged race complaints are in the informal resolution stage.

A consultant is developing a pilot training course for Washington Office supervisors and managers. If successful, the course will be presented to the supervisors and managers of each region.

Conference Office

The Conference Office is responsible for planning developing and managing arrangements for meetings, conferences, seminars, etc., held for Washington personnel and for providing advice to the regional offices The office is also responsible for preparing budgetary estimates and comparability studies supporting cost effective scheduling, locations and facilities.

The major accomplishments for 1981 were the successful planning and arranging of two regional administrators' meetings, two deputy regional administrators' meetings and a deputy regional administrators' electronic data processing/trust training seminar. In addition to those major conferences, the office assisted senior management with 16 meetings or planning retreats, 38 state bankers association meetings, and 85 in-house functions.

Selected Addresses and Testimony

Statement of Jo Ann S. Barefoot, Deputy Comptroller for Customer and Community Programs, before the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs, Washington, D.C., July 21, 1981

I am pleased to present the views of the Office of the Comptroller of the Currency on S. 963 and S. 1406, bills which would further deregulate existing interest rate ceilings. S. 963 would expand to all lenders the current federal pre-emption of state usury ceilings, which permits federally insured lenders to charge interest at 1 percent above the Federal Reserve discount rate on all loans. S. 1406, the proposed Credit Deregulation and Availability Act of 1981, would broadly pre-empt all state usury ceilings on business, agricultural and consumer loans and allow the marketplace to determine the rate of interest on those loans.

We are seriously concerned with the impact of arbitrary usury ceilings on the availability and allocation of credit in various markets. As we have stated on several occasions, usury laws should be repealed, pre-empted or substantially modified because they create arbitrary distortions in our capital market system. Further, as the sponsors of S. 963 recognize, when usury laws are pre-empted with respect to some but not all creditors, substantial market disequilibriums may occur. Such disruptions affect not only the availability of credit but also the viability of businesses which must borrow at market rates but lend at substantially lower rates. We support federal legislative efforts to ameliorate the problems engendered by usury laws. S. 1406 effectuates the long-range goal of deregulating the cost of credit; we thus prefer its enactment to the continued piecemeal approach represented by S. 963.

Goals vs. Effects

Evidence collected over the years overwhelmingly indicates that elimination of restrictive usury limits would be in the public interest. Generally, usury laws:

- Fail to accomplish their desired objectives;
- Have an adverse effect on production and employment; and
- Distort the allocation of credit among markets and states.

Usury laws are intended to protect small and low income borrowers from unscrupulous lenders who might otherwise charge excessive interest rates. Those goals are important, but usury laws have unintended and adverse effects on borrowers, financial institutions and the public at large, particularly during periods of inflation and contracted credit availability. When market rates are above usury ceilings, many borrowers have been unable to obtain loans from commercial banks or other financial institutions. During such times, credit flows into markets not subject to usury ceilings. That has occurred during every period of high interest rates over the last 15 years, at the expense of borrowers, lenders and efficient operation of the marketplace.

Restrictive interest rate limitations quickly close off conventional credit sources, particularly to high-risk and low-income borrowers. When lenders are unable to charge rates sufficient to yield a reasonable rate of return, they generally stop or substantially curtail lending to such marginal borrowers. Should a lender's cost of funds exceed the prevailing usury ceilings, all consumer lending may be expected to cease.

Borrowers must forego obtaining credit, go to loan sharks for loans made above usury rate limits or seek nonmarket sources of credit such as family or friends. Alternatively, borrowers may resort to out-of-state sources for necessary credit. Those conclusions have been documented in several studies of consumer finance companies, commercial banks and mutual savings banks. Similar studies of new automobile, mortgage and personal loan markets offer the same conclusions. The results are consistent—low-income consumers are denied access to conventional credit when market rates exceed usury ceilings.

Furthermore, firms which must operate in markets subject to usury restrictions feel the impact on both costs and revenues. In the consumer finance industry, in which rate restrictions abound, low rate ceilings tend to result in fewer and larger loans because credit is allocated to low-risk consumers, and larger loans are less costly to make. When low usury ceilings are combined with low legal loan size limits, the number of loans increases, but low-income, high-risk customers still find it difficult, if not impossible, to obtain credit. Instead, low-risk customers continue to receive most of the loans, but are forced to "double-up" by acquiring costly multiple loans to get the amount of credit desired.

Those adverse effects of usury ceilings on individual borrowers and lenders are translated on a broader scale into harm to the economies of states which have low interest rate ceilings, and, in turn, to the nation's economy.

Credit is an essential ingredient to commerce, and usury ceilings and other arbitrary restrictions that limit credit availability tend to affect employment adversely and dampen economic growth. For example, a 1977 study showed that in Tennessee, which until 1978 had a constitutional interest cap of 10 percent, the economy grew faster than the national economy except when market interest rates rose above the state usury

ceilings. Between 1974 and 1976, when market rates exceeded the usury ceilings, the study found that Tennessee's annual loss in production averaged $50 million, the annual loss of jobs averaged 7,000, the annual loss of retail sales averaged $80 million and the annual loss of assets in financial intermediaries averaged $1.25 billion.

Such geographic distortions in the distribution of credit lead to significant inefficiencies and inequities in the national marketplace. That is apparent from differences in business activity among various states. Arkansas, which has a 10 percent constitutional usury limit, is a notable example. A 1976 study of Texarkana noted distinct differences between the types of firms on the Texas side of the city and those on the Arkansas side. Considerably less retail trade was conducted on the Arkansas side, despite the approximately equal distribution of Texarkana's population between the states. The majority of automobile dealers, appliance stores and other businesses that rely on consumer credit moved to the Texas side. The subcommittee has heard a great deal about the problems Arkansas has experienced over the past year due to its constitutional rate ceiling. Clearly, inefficiency and inconvenience result from such locational patterns.

The inescapable conclusion was well stated over 100 years ago by the first Comptroller of the Currency, Hugh McCulloch. Mr. McCulloch took issue with the caprice of state usury laws in his initial report to Congress in 1863 and concluded: "Where money is abundant it is cheap, where scarce it is dear; and no legislation has been able to control the effect of this general law."

Timeliness for Change

Actions of the 96th Congress reflect congressional recognition of the problems associated with usury ceilings. Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDA) and its subsequent amendment in the Housing Act of 1980, pre-empted all usury ceilings on first lien mortgages, set an alternative federal usury ceiling of 5 percent above the Federal Reserve discount rate for business and agricultural loans of $1,000 or more, and, for all other loans, established an alternative ceiling of 1 percent above the Federal Reserve discount rate for all federally insured lenders. States may override the first two of those federal pre-emptions prior to April 1, 1983.

While those provisions of DIDA represent a step toward a more competitive, less regulated environment, further reforms are needed. The flexible federal usury alternative for business and agricultural loans is only temporary. In addition, the maximum rate authorized by DIDA for consumer loans is too low to allow market forces to operate effectively in determining interest rates in the present high-rate environment. The current Federal Reserve discount rate is 14 percent. With the prime rate of most banks hovering around 20 percent, it is unrealistic to expect lenders to charge a maximum of 15 percent on consumer loans. Finally, as has been stated so often at these hearings, DIDA's pre-emption of state ceilings on consumer loans is only available to federally insured lenders. It is unavailable to retailers and finance companies, which are currently suffering severe financial hardships in states with restrictive rate ceilings on consumer loans.

Retention of usury ceilings is also inconsistent with the direction in which Congress has moved in phasing out deposit interest rate ceilings. With the eventual elimination of all deposit rate limitations, changes in the average cost of funds to depository institutions will reflect more closely changes in market rates of interest. If banks and other financial institutions are to maintain their long-term viability, they must be able to adjust their interest charges and fees in response to changes in their cost of funds and operating expenses. The ability of depository institutions to pay market rates to depositors is necessarily dependent on similar flexibility in their authority to charge such rates on their loans. When ceilings on consumer loans are set at unrealistically low levels, depository institutions will be unable to engage profitably in consumer lending, if faced with increasingly high and volatile costs for their funds.

Finally, state usury ceilings are quickly becoming an anachronism in a financial system which is increasingly national in scope. Legal restrictions that attempt to set the terms and conditions for local lending are becoming less and less effective. Households in Maryland may use bank credit cards issued by a California bank and, therefore, be subject to the less restrictive California usury ceilings. Similarly, lenders in a state subject to low usury limits may increase their purchases of out-of-state loans or may sell their loanable funds in unregulated national markets such as the interbank federal funds market. Thus, some individuals and institutions are able to circumvent or adapt to usury ceilings, while others suffer from their impact. Those inequities call for a national response which would rationalize and equalize the legal framework and allow the marketplace to determine the price of credit. With interstate barriers to the provision of credit becoming more insignificant each day, interest rate ceilings are properly a subject of federal concern now, just as railway rates were at the turn of the century.

Recommendations

S. 963 is intended to treat all lenders equitably, whether or not federally insured, by allowing an alternative federal rate ceiling of 1 percent above the Federal Reserve discount rate for all types of credit, including consumer loans. We view that bill as a stop-gap measure which would correct an imbalance created, in part, by the partial pre-emption enacted in Sections 521-529 of DIDA. While we regard the proposal as a step in the right direction, we have some reservations regarding its provisions.

First, under Sections 521-529 of DIDA, federally insured lenders are authorized to charge 1 percent above the discount rate. This ceiling does not expressly include any surcharge that the Federal Reserve banks may impose on the basic discount rate. S. 963, however, would include, in the ceiling for non-federally insured lenders, the surcharge, which currently is 4 percent. Enactment of the bill would, there-

fore, put federally insured lenders at a competitive disadvantage with respect to other lenders, a situation which the bill's authors presumably do not intend to create. We suggest that, should the bill be enacted, it be modified to amend Sections 521-529 of DIDA to include the surcharge.

Further, if a federal rate ceiling is to be retained, we suggest that the Federal Reserve discount rate is not an appropriate index. Use of the discount rate imposes an essentially short-term index on markets that often involve long-term lending transactions. The discount rate is a tool of monetary policy and may not be directly related to the market cost of lender funds. Should Congress decide to create an alternative federal ceiling, we believe that several indices would be preferable to a single rate. For example, indexing the federal interest rate ceilings to changes in the rates on Treasury notes or bills of average maturity comparable to particular categories of loans might be preferable to the continued use of the discount rate.

In our opinion, S. 1406 represents a better solution to the problems described above. It represents the logical conclusion to the deregulation of interest rate ceilings begun in DIDA. We do, however, have reservations with respect to specific provisions of the bill.

Our primary concern is that in the process of preempting state usury ceilings, which, as we have stated, do not inure to the long-run benefit of consumers, the legislation appears also to sweep away various consumer protections. Total elimination of state usury ceilings could easily expose unwary borrowers to unscrupulous lenders and lending practices. The subcommittee has already heard evidence of such practices in states which have enacted broad credit deregulation laws. In those parts of the country where credit markets are not yet reasonably competitive, a need remains for minimum safeguards to protect the rights of those most vulnerable to predatory lending practices. We believe, therefore, that the elimination of consumer usury ceilings, such as contemplated by S. 1406, should contain provisions for retention of specific state safeguards affecting consumer loan transactions. Although certain provisions for this purpose are contained in S. 1406, greater specificity should be provided as to the States' role and the type of protections which may be retained or enacted by each state with regard to consumer lending.

For example, some states have enacted small loan acts, retail installment credit sales laws, automobile sales finance acts and other credit codes, such as the Uniform Commercial Credit Code, to provide such safeguards. Those laws often limit or prohibit prepayment penalties, late fees, attorney's fees, the use of the Rule of 78's and acquisition fees, as well as certain contractual provisions with regard to consumer credit. We believe that the federal law should provide specifically for either the pre-emption or continued viability of such protections.

We also believe that serious consideration should be given to transitional problems that might arise as a consequence of an immediate lifting of usury ceilings. For example, individuals with large outstanding balances on open-end lines of credit should not be exposed to large unanticipated increases in their monthly payments caused by sudden increases in their finance charges. One response to the problem would be to require that the former interest rate be retained on the present outstanding balance.

The OCC supports consideration by the Congress if federal pre-emption of usury ceilings. In the current environment of inflation and high interest rates, fixed rate usury laws are counterproductive. As we have testified before, they tend either to restrict the availability of credit or encourage abuses by unregulated lenders. Recent legislation which provides for the phasing out of interest rate ceilings on deposits represents an important step toward creating a competitive marketplace. Meaningful reform of usury laws, combined with protection of consumers against anticompetitive practices, fits logically into that legislative pattern.

Statement of Edmund G. Zito, Chief National Bank Examiner, before the Subcommittee on General Oversight and Renegotiation of the House Committee on Banking, Finance and Urban Affairs, Washington, D.C., July 23, 1981

I am pleased to appear before this subcommittee to discuss the experiences and views of the OCC regarding our recent compliance efforts concerning the Bank Secrecy Act. More specifically, I will comment on the report recently prepared by the General Accounting Office (GAO) concerning that law.

The OCC is charged by the Congress with general supervisory responsibility over the activities of national banks. There are approximately 42,000 domestic financial institutions, including commercial banks, savings and loan associations and credit unions. National banks comprise approximately 4,400 of that total. The statutory mandate of the Comptroller is to ensure that national banks operate both in conformance with safe and sound banking practices and in compliance with the many and varied statutes affecting bank conduct, including the Bank Secrecy Act. The act and regulations promulgated thereunder are designed to assist law enforcement officials in detecting and prosecuting criminal conduct by documenting certain fund flows which could involve such activities.

The act and regulations require, among other things, that banks obtain and preserve financial information and file certain reports regarding unusually large cash

transactions. The legislative history of the act emphasizes its purpose to facilitate the investigatiion of narcotics trafficking, tax evasion and other "white collar" criminal activities which may have a high degree of usefulness in such investigations by requiring the preservation of financial information. The OCC shares the concern of the subcommittee and law enforcement officials regarding the potential for abuse of our nation's financial institutions by criminal elements in the handling of funds obtained through illegal activities. The act is designed to expose such abuses. We welcome the interest that this subcommittee has taken with regard to the implementation and effectiveness of that law.

At the request of the subcommittee, the GAO has recently examined (1) enforcement of compliance with the Bank Secrecy Act's reporting requirements, (2) dissemination to law enforcement agencies of reports generated pursuant to the act and (3) uses and usefulness of those reports to law enforcement agencies in carrying out their investigative responsibilities. The process of evaluating the act's implementation by the Department of the Treasury and other agencies with responsibilities under the act has been most useful in focusing attention on existing deficiencies and stimulating a coordinated enforcement effort. The recent success of the Operation Greenback project in South Florida is directly attributable to that increased attention and coordinated effort. The OCC is pleased with the contribution which our examination staff has made to that project.

The GAO has today presented its report to the Congress regarding the Bank Secrecy Act. We would like to take this opportunity to comment on specific aspects of that report.

Compliance Monitoring Practices

The Bank Secrecy Act requires financial institutions to file a currency transaction report with the Internal Revenue Service whenever they handle a currency transaction in excess of $10,000. The OCC has been delegated responsibility for monitoring the compliance of national banks with this and other requirements of the act.

In the report, GAO states that bank regulatory compliance monitoring has been cursory. It is easy to take that GAO criticism out of context. An uninformed reader may not understand the scope and practical limitations of the OCC's supervision and examination processes.

In the 11 years since enactment of the Bank Secrecy Act, the national banking system has experienced an explosive growth in assets, sophistication and technology. During that period, Congress has also given the OCC significantly new responsibilities for implementing a variety of new banking and consumer protection laws. At the same time, various governmental actions over the past few years, including hiring freezes and employment ceilings, have prevented us from adding to our field examination forces. It has become increasingly important for us to allocate our examiner resources in the most efficient manner to fulfill our many responsibilities.

In carrying out our supervisory responsibilities, our examiners perform periodic onsite examinations. They do not, however, as a matter of course review a bank's daily transactions. It is thus essential that banks under our supervision be informed of the requirements of the law and, during our examinations, be subjected to tests which will determine whether they have adopted and implemented adequate policies and procedures to ensure their compliance with those requirements.

Since the enactment of the Bank Secrecy Act, we have informed banks of its requirements and instructed our examiners to verify the adoption of adequate compliance procedures by each bank. Notwithstanding a delay in the initial implementation of the act by a court challenge to the constitutionality of its regulations, as early as April 15, 1972, this Office required compliance with those provisions of the law which were not challenged in that suit. Soon after the resolution of that action, we put full compliance procedures into place. Over the years, as the implementing regulations have been amended, we have provided specific guidance to the national banking industry and to our examination personnel about their responsibilities under the act through the issuance of various banking circulars and examining bulletins.

We believe that the OCC has acted responsibly to inform the banks under our supervision of the act's requirements and to monitor their compliance with it.

Recent Initiatives—Revised Compliance Examination Procedures

While the GAO acknowledges that efforts are underway to improve implementation of the act, we feel that the report minimizes the substantial progress that has been achieved. The GAO suggests that the regulatory agencies have been reluctant to improve compliance examination procedures. In fact, the OCC has worked with the Department of the Treasury since May 1973 to develop appropriate examination procedures. Over the past 15 months, the OCC, in conjunction with the Department of the Treasury, GAO and the other financial institutions' regulatory agencies, has developed, tested and implemented revised compliance examination procedures.

The revised procedures contain a two-module examination approach which requires all financial institutions to be subjected to a more thorough compliance check than was previously used. However, it reserves the most extensive, time-consuming procedures for institutions which warrant further examination based on the results of the first module. That is consistent with all our new examination procedures which rely less on a "hands-on" examination than on one which checks to see that the banks have adequate controls and procedures in place.

The revised examination procedures to determine compliance with the requirements of the Bank Secrecy Act represent an efficient allocation of our scarce personnel resources and are consistent with with approach taken with respect to our other examination procedures.

OCC Commitment

The GAO report concludes that the supervisory agencies lack the appropriate commitment to ensuring compliance with the requirements of the act. The OCC is fully committed to its compliance responsibilities. To better fulfill our delegated responsibilities under that law, we have:

- Emphasized the need for the industry to develop compliance audit programs;
- Met with accounting firms to emphasize the need for external audit coverage in the Bank Secrecy Act area;
- Improved our examination procedures and training;
- Reported violations of the Bank Secrecy Act to the Department of the Treasury on a quarterly basis;
- Made specific referrals to the Department of the Treasury and the Department of Justice and assigned examiners to assist in related investigations;
- Taken administrative actions against banks for Bank Secrecy Act violations;
- Denied, upheld or conditionally approved corporate applications based on a bank's compliance with the Bank Secrecy Act.

We believe that the OCC has indeed demonstrated a substantial commitment to compliance with Bank Secrecy Act requirements.

Impediments to Usefulness of Bank Secrecy Act Information

Compliance with the requirements of the act must be coupled with the use of Bank Secrecy Act information by law enforcement agencies to effectuate the act's intended purpose. We agree with GAO that the major impediments to the effective use of information developed pursuant to the Bank Secrecy Act are the numerous barriers that have been established which limit cooperation between federal supervisory and law enforcement agencies.

The report indicates that:

> coordinated efforts among Federal law enforcement agencies have been difficult to achieve. Barriers to coordination arise from conflicting agency missions, differing management policies, and constraining legal and policy issues. The major impediments are statutory. Those are limitations, actual or perceived, that arise from, among others, the Privacy Act of 1974, the Freedom of Information Act, the Tax Reform Act of 1976, the Right to Financial Privacy Act of 1978, state privacy acts, grand jury secrecy rules, and the procedures of various agencies. For example, in hearings held last week before the Subcommittee on Government Information of the House Committee on Government Operations, extensive discussion was directed to problems faced by the law enforcement agencies under the Freedom of Information Act. The procedural mechanisms and rights established by that law and similar statutes are designed to promote congressionally sanctioned values and may, inadvertently or purposefully, restrain government information-gathering activities.

The OCC endorses cooperative government efforts which are aimed at achieving legitimate law enforcement purposes. We believe that statutory barriers to interagency cooperation should be rexamined and revised to ensure the intended purposes of each law in a manner which is least disruptive to efficient and effective law enforcement efforts.

GAO Proposals

In its report, the GAO makes two suggestions to the banking supervisory agencies. First, the GAO suggests that the agencies select yearly, at random, a set percentage of banks, *e.g.*, 10 percent, in which extensive compliance examination procedures would be performed. We do not believe that this is the optimal way to deploy our limited resources.

The OCC will commit to intensified examinations of targeted banks in specified cities. We have suggested to the Federal Reserve Board that targeting of specific financial institutions for extensive examinations could be based on amounts of cash shipments from banks to the local Federal Reserve branch. That process could be automated and result in an early warning system which would allow us to target institutions more effectively for intensive examination. We also believe that receipt of information from the law enforcement community may help us target institutions in which we should concentrate our resources. Targeting would ensure that intensified examination efforts would be more likely to bring forth useful results. Random, nationwide sampling does not provide such assurance.

Additionally, GAO proposes designating one supervisory examiner in each region to review Bank Secrecy Act compliance examinations. We believe that our present review procedures for examination reports are adequate and feel that additional commitment to specialization would be an inefficient use of our limited resources. It should be noted, however, that certain regional office personnel have developed a degree of expertise in Bank Secrecy Act matters, as needed, although those individuals continue to have other responsibilities.

Reexamination of the implementation and effectiveness of the Bank Secrecy Act has proved a useful exercise in pinpointing deficiencies in existing compliance procedures. We believe that the recent tightening of implementing regulations, improved examination procedures, and cooperation among the agencies should facilitate enforcement of the act and result in improved compliance. Let me underscore the commitment of the OCC to continued efforts to ensure compliance by national banks with requirements of the Bank Secrecy Act and to improve cooperation with the law enforcement community.

Remarks of Charles E. Lord, First Deputy Comptroller, before the Governor's Banking Conference, Jackson, Miss., September 9, 1981

Today I would like to explore the important relationship between the banks, the business community and a state government in supporting a healthy area economy. I think that relationship can best be described as one of interdependence. Now, the notion of interdependence of the commercial bank, the local business and the local community's or state's economic health is not new. But a brief look at the critical nature of the contributions of each leg of that triangle to the strength of the others provides a foundation for discussing mutual action in the realm of development finance.

Banks are essential to the process of promoting the creation and expansion of business. The community bank is the hub of local business information and, therefore, has a unique ability to match local investment opportunities and investment resources. Local firms rely on the bank for day-to-day financial services and to help meet requirements for expansion. According to a 1980 survey by the National Federation of Independent Businesses of a sample of their 600,000 members, 83 percent of the firms borrowing money received their most recent loan from a commercial bank. And banks were also the second most important source of capital (next to personal sources) for small business startups.

Those firms also depend on the bank, particularly in difficult economic times, to make the best possible use of participations, correspondent relationships, government relationships, government guaranteed financing, secondary markets and other resources such as the newly created bankers' banks. The bank may use those outside resources to keep its customers healthy and also may use them to manage its own exposure to risk and to limit administrative costs.

Besides their critical role in small business finance, commercial banks have also played a major role in industrial recruitment programs, particularly in the Southeast. The banker is in a key position to mobilize the information and people that a visiting company wants to see. The bank is also an institution with a clear self-interest in gaining the attention of its potential customer early on. However, the industrial development activities of banks frequently go beyond organizing information for the prospective new local business. Leadership in identifying and solving a range of community problems is characteristic of lenders engaged in industrial development. That community involvement is viewed as an essential part of supporting business growth. As most of you know, firms seeking a location in which to expand also are viewed as an essential part of supporting business growth. As most of you know, firms seeking a location in which to expand also are looking for an appropriately trained labor force, available and affordable housing, good community services and a pleasant quality of life. Though financing for housing and for local government activities and involvement in public education are not the focus of that meeting, such investments are necessary to economic growth.

When considering the contributions banks make to business development, it is important to recognize that success is not the exclusive preserve of large institutions with a well-financed, specialized staff. Most small expanding firms first look to the banks in their own communities for advice and assistance. Many firms with fewer than 20 employees are key contributors to job growth and community attractiveness. Information and financing assistance for many entrepreneurs should be available in the community bank to support local development most effectively.

While growing businesses clearly need banks, banks also require a healthy customer base for survival. Short-term competitiveness as well as long-term growth often depend on the strength of local commerce and the banks' ability to serve it.

In the short term, inflation, technology and the changing market for financial services make it a certainty that banks will face increasing competition in their marketplaces on a local, regional and national scale. High interest rates and the pressures of deregulation make development of creative strategies and tools for commercial banks more difficult and more crucial than ever before. Some of the new competition will come from other banks, but much of it will come from nonbank financial service providers. Merrill Lynch and Control Data Corporation have been major recent entrants into the small business credit market. Finance companies have for the past several years provided a growing percentage of business loans. Deregulation should open more areas of activity to commercial banks in the next few years, enhancing their ability to compete. Preparation for those new opportunities—for banks of all sizes—should begin now.

One approach which may assist the local bank in sustaining its competitive advantage over large out-of-state institutions is an effort to identify specific growth opportunities in the local marketplace and to tailor an appropriate business development strategy. A banker's personal knowledge of local businesses and indepth industry-specific expertise can make the community bank the best choice for a local firm's financial business. Research shows that such personal knowledge and expertise particularly are important for small firms. Another approach may be to expand into equipment leasing services and lease financing—a growing requirement for businesses of all sizes.

The special challenge facing local financial institutions is getting a detailed picture of customer financial needs and developing profitable ways to serve those needs.

A complementary competitive strategy is to develop—together with other local and state leaders—a program to expand the total local market.

Facts about job creation and economic development emphasize the cost of missed opportunities to the financial community:

- Demographic shifts indicate continued growth

in population and economic activity in the South and in rural and suburban areas. Mississippi has an opportunity to capitalize on this trend.

- Recent studies completed at the Massachusetts Institute of Technology using Dunn and Bradstreet data indicate that the rate of (nonagricultural) job loss is approximately the same in growing and declining regions and cities; almost 8 percent yearly. It is the rate of job creation that varies greatly. That means to stay even a state or locality would expect to replace almost half its employment base every 5 years.
- Branch plants account for somewhat more than one-half of employment growth in the South. The creation and expansion of small and independent firms account for the remainder of jobs created. The important role played by small companies in job creation has become clear.
- Capital costs are often an important factor in location decisions and, with today's inflation and high interest rates, are frequently critical. Certainly capital availability is a key concern for the smaller firm seeking to expand.

The need to take special steps to support job creation becomes more acute in the face of a difficult economic environment. Banks face more limitations on their ability to finance firms and seek the help of public and private institutions to address the gaps.

That brings us to the third partner. If banks are essential to business development and business growth is required for strong, competitive commercial banks, the public sector also plays a necessary role.

Banks, individually and even as a group, are not suited to provide every business with all its financial needs. Even with links to outside resources and broader capital markets, the role of financial institutions is limited to profitable and secure lending opportunities. Other private institutions' investments fill some of the gaps. However, some long-term development financing and equity financing can most appropriately come from, or be facilitated and organized by, the public sector.

Across the country, state governments are more than ever becoming the focal points of activity in the field of economic development. More federal resources are going to be made available through state governments to reduce administrative costs and promote more direct program accountability for the public. It is easier to develop innovative and appropriate development finance mechanisms on the state level than on either the local or federal levels. State governments have the taxing and bonding powers needed to implement coordinated public and private investment for economic development. Experimentation with joint public and private finance mechanisms has been taking place at the state level, and a variety of techniques are available. Mississippi, of course, has developed a guarantee program, an information and technical assistance program and an active small business investment corporation, with the support of financial institutions. Connecticut and Massachusetts have experimented with venture capital funds for new products and technologies, Florida with a community development corporation program, North and South Carolina are expert in industrial recruitment and Indiana recently passed enterprise zone legislation. California and Massachusetts have designed state investment strategies where policy priorities for state development are set and reviewed in a structured process.

I have tried to stress the theme of the interdependence of banks, business and government in achieving economic development goals. Interdependence is the foundation for that meeting, for even though the public sector plays a key role in designing development finance programs, the success of those programs—and the achievement of the goals—depends on their usefulness to the banking community and to the businesses they serve. Therefore, it is in the interest of the bank and the state that you assume a responsibility—together with other key business leaders—not only to support programs but to ensure they meet your needs and the needs of your customers. To move forward, it is in your interest to become informed about the opportunities that are available for using your resources and those of the state.

The OCC has tried to assist banks interested in exploring those opportunities. Three years ago the agency established a Community Development Division, a nonsupervisory office to provide information and assistance to banks designing development programs. Some of you, I am sure, attended the Atlanta meeting in May that focused on business development in small communities. The division sponsors educational conferences and workshops as well as research projects and publications. Also, the division and other OCC offices assist banks in designing workable means to make community development investments. For example, the OCC has enabled eight national banks to establish subsidiaries called community development corporations (CDC).

The Comptroller issued an interpretive ruling in 1978 which authorizes national banks to invest in such a CDC. The bank's investment in a CDC must be predominantly civic or public in nature and not merely an entrepreneurial activity, cannot exceed 2 percent of its capital and surplus for any one project or 5 percent for all projects, and must be accounted for on the bank's books under "other assets." The CDC's approved to date are engaged in a broad range of rehabilitation and revitalization activities, including downtown development and low income housing development. Those activities are being carried out by banks as large as First National Bank of Chicago and as small as institutions like the First National Bank of Fayetteville, Ark., and the First National Bank of Waseca, Minn.

The OCC also has a library of published information and maintains contact with banks experienced in a range of development activities. Those resources are available to assist any interested lender.

Bankers' approaches to local development challenges have been creative and tailored to particular local needs. You are hearing from some of the most creative and experienced practitioners today. The work of Deposit Guaranty, Citizens and Southern National Bank of Atlanta, North Carolina National Bank and First Mississippi National Bank is well known to the OCC.

Jim Howell has been involved in much of the innovative work occurring in small and mid-sized communities in New England. In most cases, while the problems and techniques may vary, there is one common characteristic shared by successful projects: personal commitment and leadership of top bank management. The OCC is available as a partner to help you explore viable, appropriate alternatives for bank participation in development finance. But the leadership must come from you. Only experienced bankers can provide the leadership needed to design realistic financing programs, to help make those programs function, to work on community problems and issues important to job growth and to guide the innovative and healthy banks so necessary to the entire process.

Statement of Cantwell F. Muckenfuss III, Senior Deputy Comptroller for Policy, before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs, Washington, D.C., September 22, 1981

Mr. Chairman and members of the subcommittee, we appreciate this opportunity to present the views of OCC on adjustable-rate mortgages (ARM's).

These hearings are timely in light of the Federal Home Loan Bank Board and OCC actions on ARM's, the plight of housing and the housing finance system and, most importantly, the distress of thrift institutions. The hearings provide an opportunity to report why we determined it was imperative to go forward with ARM's and to explain the rationale for the specific actions we took.

But, more importantly, these hearings also provide the opportunity to place the subject of ARM's within the context of a broader agenda—one which concerns the health and competitive vitality of all deposit-taking institutions, an efficient housing finance system and a vigorous and expanding economy. In that regard, we strongly support the plans of the Committee on Banking, Finance and Urban Affairs to undertake " . . . a broad-based exploration of proposals to restructure financial institutions and to provide a new and more realistic competitive environment for the industry."

Historically, depository institutions have been tightly regulated. A framework of law and regulation has controlled entry, restricted the ability to expand geographically, regulated prices and defined permissible products and areas of activity. Areas of specialization in the provision of financial services, such as a focus on housing finance, are codified; products are defined by law and not by the demands of the marketplace. Similarly, profitability and competitiveness have often turned on governmental pricing decisions rather than the exercise of private discretion. Although our financial system has served us well, it is evident that major aspects of this framework are incompatible with the realities of the marketplace and are creating serious dislocations for financial institutions and their customers.

The plight of mortgage lenders provides a case in point. Inflation and high and volatile interest rates have had devastating effects on those financial institutions, predominantly thrift institutions, whose asset portfolios are composed primarily of long-term, fixed rate mortgages. During much of the post-World War II period, the mismatched asset liability maturity structure of thrifts worked relatively well. However, the current volatile interest-rate environment, in which short-term rates frequently have exceeded long-term rates, and the dramatic upward shift in the cost of funds, caused by inflation and the increased interest sensitivity of depositors, have seriously impaired the profitability of such an asset-liability maturity structure. Indeed, many thrifts are locked into low, fixed rate, 30-year mortgages that do not provide enough revenue to pay interest on deposits let alone cover operating expenses.

The effects of inflation and interest rate volatility have been amplified by deposit rate deregulation, which began with the money market certificate in mid-1978 and which, under the provisions of the Depository Institutions Deregulation and Monetary Control Act, will result in total elimination of controls no later than March 31, 1986. Rate deregulation, of course, became imperative when inflation-induced high interest rates led to outflows of deposits into unregulated market-rate instruments and created concerns about providing small savers with the opportunity to realize market rates.

In light of those conditions, we became convinced that the flexibility to offer adjustable-rate mortgages is essential for depository institution participation in home mortgage finance. Indeed, it is clear that past reluctance to provide thrift institutions with asset flexibility has contributed to their current plight and to the dearth of mortgage credit flowing from them. Accordingly, we determined that we should act affirmatively to facilitate the offering of ARM's by national banks. Although enhanced flexibility will do nothing to ameliorate the consequences of a portfolio composed of long-term, low-interest loans, we believe that it will increase the flow of funds to housing and have a moderating impact on the cost of mortgage credit.

The problems of the thrift industry illustrate most graphically what can happen when there is lack of flexibility to adjust to changing circumstances. The larger lesson should not be lost.

Fundamental forces are reshaping the financial services industry—both in our country and abroad: inflation and economic uncertainty, erosion of geographic barriers to competition, erosion of product market bar-

riers, deregulation of the liability side of the balance sheet, demographic shifts and the revolution in telecommunications and data processing technology.

Because of the pervasive impact of law, regulation, and public policy, the health and vitality of the financial system in the coming decades will reflect not only the forces of the marketplace, but, of equal importance, decisions made in the public sector—by the Congress and the regulatory authorities—in light of those forces. The actions of the agencies with respect to adjustable-rate mortgages reflect such decisions. However, they constitute but a part of a much larger agenda of financial reform that is essential if regulated deposit-taking institutions are to have the flexibility to adjust and compete effectively. The urgency of that undertaking has been recognized by Congress and the Administration. The Committee's proposed "discusssion draft," the Federal Home Loan Bank Board's proposed legislation and other bills and materials will provide a solid foundation for moving ahead seriously and expeditiously with financial reform.

In the discussion that follows, we describe and explain our actions with respect to ARM's and then turn to the larger agenda that is before us.

Comptroller's Adjustable-Rate Mortgage Regulation

Two judgments led principally to the Office's commitment to consider adoption of a regulation that would explicitly authorize national banks to make or purchase ARM's. First, it was our judgment that fixed rate lending in the face of high and volatile rates has been very difficult, if not imprudent, and that mortgage lending would prove substantially more attractive for national banks if granted a flexible framework. That judgment reflected two considerations. Pre-emption of state laws which significantly inhibit or forbid ARM lending enhances the attractiveness of mortgage lending in those states. Moreover, we believe that the provision of a uniform and flexible federal framework which provides a known legal environment and acceptable standards for disclosure will encourage national banks to participate in mortgage lending.

Second, the decision to consider adoption of an ARM regulation reflected concern that a proliferation of new instruments, combined with the relative novelty and potential complexity of the instruments, would create substantial borrower confusion. In addition, the lack of a national set of disclosure standards for national banks would make it more difficult for the Office to supervise.

Accordingly, we began more than a year ago to prepare a regulation that would reflect those judgments. The proposed regulation was published for comment on September 29, 1980. The Office solicited comment on a wide variety of issues associated with ARM lending. In early December, the Office, in conjunction with the Federal Home Loan Bank Board, held hearings in Washington, D.C., Chicago and Los Angeles to provide for broad public participation in the rulemaking process. The Office received written comments from approximately 330 persons and heard testimony from over 50 witnesses.

Support for flexible ARM lending authority was virtually unanimous among those commenting on behalf of national banks. Some of them, however, felt that the proposed limits on interest rate adjustments were too restrictive and thus might discourage ARM lending. Representatives of consumer groups and community groups expressed concern over the rising cost of homeownership and the impact that ARM lending might have on the availability of mortgage credit for low to moderate income borrowers and low to moderate income neighborhoods. Many consumer representatives were sympathetic to the difficulties mortgage lenders face in making fixed rate loans in an inflationary environment. Nonetheless, they urged that the extension of ARM lending authority be limited and that such authority be granted only in combination with other federal government actions to ensure the availability of affordable mortgage funds for low and moderate income borrowers.

Based on the comments we received, testimony presented to us and our analysis of events in the marketplace, the OCC issued an ARM regulation on March 24, 1981. We view that regulation as an interim measure designed to provide a general framework for national banks to participate in ARM financing. We intend, from time to time, to reassess the need for the various limitations in the ARM rule, based on the acceptance of those instruments by lenders and borrowers and developments in the mortgage market. (The final regulation is attached.*)

Four fundamental decisions were made in formulating the ARM regulation. First, we rejected the option of specifying a single adjustable-rate mortgage instrument for national banks. Economic conditions in the various local markets and the needs of borrowers and lenders alike are simply too varied to be satisfied by a single mortgage instrument. We concluded that the better course lay in establishing a flexible legal framework within which borrower and lender can arrive at a contract satisfying the needs of both.

Second, we concluded that we should pre-empt state law in that area, including both permissive and restrictive regulatory regimes, with a comprehensive federal approach. The framework that was developed will enhance mortgage availability in those states which were unduly restrictive and yet, due to its built-in flexibility, will not stifle innovation in states which are more permissive. Moreover, as we have indicated, we believed that a significant need existed for a uniform set of disclosure standards to facilitate borrower comprehension of the options made available through those new instruments.

Third, we determined that the regulation should be somewhat more flexible than originally proposed. For example, the regulation as adopted provides for a 2-percentage point annual cap on interest rate movement rather than the 1-percentage point cap which was proposed. That reflected the view that the risks to borrowers posed by significant variations in rates were

* The regulation is not included here because of space limitations. It is available from other sources.

outweighed by the benefits to be derived from the increased availability of funds provided by lenders attracted by the more flexible instruments and the downward pull on price resulting from increased competition. Moreover, borrowers should also benefit because lenders need not set the interest rate as high on ARM's as on fixed rate mortgages in light of reduced interest rate risk. We also believe that in a competitive lending environment many institutions will choose to compete with instruments that do not use the full latitude provided by the regulation.

Fourth, we decided that alternative mortgage instruments that limited monthly payment changes but did not limit periodic interest rate changes should be permitted to develop outside the limitations of the ARM regulation. That action was taken with the intent of encouraging marketplace experimentation and not foreclosing the potential development of better mortgage instruments. However, because of our concern for insuring appropriate consumer safeguards, we required national banks wishing to offer such instruments to submit their plans for review at least 60 days prior to their intended introduction date. Those banks with programs in place were permitted to continue but were required to submit details to the Office for review.

Events during the past year reinforced our judgment that an adjustable-rate mortgage regulation is necessary. Interest rate ceilings on the popular 6-month money market certificate of deposit ranged from 7.75 percent in June of 1980 to 15.92 percent in May of 1981. At the end of July, 48 percent of commercial bank deposits were in rate-sensitive liabilities, including large negotiable certificates of deposit, money market certificates of deposit and 2½ year small-saver certificates. The market values of fixed rate, long-term mortgages made a year ago have suffered a decline of more than 20 percent due to higher interest rates. As a consequence of that decline and those stemming from low-rate mortgages made in previous years, it is becoming increasingly difficult for borrowers to obtain fixed rate mortgage loans except from lenders with access to federally sponsored agencies or private investors willing to purchase those loans.

Description of Regulation

The regulation pre-empts state laws for national banks and extends broad authority to all national banks to design interest rate capped ARM instruments, subject to the following conditions.

- Interest rate adjustments must be tied to changes in one of three specified national interest rate indexes,
- Interest-rate adjustments must occur at regular intervals and not more often than once every 6 months,
- The maximum interest rate change is limited to 1 percentage point for every 6-month period between rate adjustments; no single rate adjustment can exceed 5 percentage points—the regulation does not require an overall interest rate cap;
- Interest rate increases caused by changes in the index are optional but decreases are mandatory;
- Interest rate adjustments may be implemented through adjustments to the monthly payment amount or the rate of amortization of the loan; there are limitations on the maximum amount of negative amortization;
- Prepayment penalties are prohibited after the first scheduled rate adjustment notification date; fees for rate adjustments are prohibited; and
- ARM loans may contain due-on-sale clauses or may be assumable at the discretion of the bank.

Several features of the regulation deserve further comment.

Interest Rate Indexes—The requirement that interest rate adjustments on ARM's be tied to movements in an interest rate index is an important borrower protection feature of the regulation. Use of an authorized index ensures that changes in the interest rate on an ARM are based on an objective indicator of broad market conditions and thereby protects borrowers from arbitrary increases in the loan rate. It should be noted that the index value does not necessarily determine the level of the initial mortgage contract rate. Regional differences in mortgage market conditions and in mortgage rates can be accommodated through initial pricing of the mortgage loan. Thereafter, tying rate changes in a nationally based index should provide lenders sufficient flexibility while protecting borrowers.

The regulation specifies a choice of indexes because we recognize that no single index can be expected to meet the needs of all lenders and borrowers. A limited number of indexes was authorized by the Office to create a degree of uniformity among national banks making ARM's and to facilitate consumer understanding of ARM loans. The authorized indexes—the 6-month Treasury bill rate, the 3-year Treasury rate and the Federal Home Loan Bank Board's average mortgage rate on previously occupied homes—reflect either a national average of interest rates on mortgage loans or the interest rates on securities traded in national markets. Such indexes have the advantage of being easily verifiable; many newspapers and government and private publications track them.

However, since the issuance of the ARM regulations, the Federal Home Loan Bank Board has issued its ARM regulation permitting savings and loans to use any interest rate index that is readily verifiable by the borrower and not under the control of the lender. In addition, the Federal National Mortgage Association recently announced its ARM purchase program which includes five indexes, two of which are not permitted under the ARM regulation. Therefore, we are contemplating an expansion of permissible indexes and, in fact, have permitted several national banks to use the 3-month Treasury bill rate as an index in conjunction with payment-capped ARM programs. We continue to believe that it is important at this stage of ARM development for lenders to have the flexibility to choose among several indexes and that the mortgage market,

and the secondary market in particular, should play a major role in the determination of appropriate indexes.

The regulation does not permit a national bank to use its own interest rate, such as its cost of funds, as the index for rate adjustments. A cost of funds index may not accurately reflect changes in market rates because the market for consumer deposits is not yet fully competitive. Moreover, competition for deposits is impeded by state and federal restrictions on branching and by regulations limiting the maximum rates of interest that depository institutions can pay on certain deposit accounts. As rate ceilings are phased out, cost of funds indexes may rise, even if interest rates on loans are stable or declining.

Periodic Interest-Rate Adjustments—Mortgage contracts that limit interest rate changes provide borrowers with insurance against future increases in interest rates. Thus, a portion of the costs to a borrower of a fixed rate mortgage or a rate-capped ARM represents a premium paid for that protection. In a competitive market, with borrowers and lenders well-acquainted with the features of available mortgage instruments, it is likely that a wide range of interest rate caps, each appropriately priced, will be available. In the present ARM market, however, many potential participants lack the information necessary to evaluate the full range of choices that could be made. For that reason, we believed that at this early stage of ARM development a cap on periodic rate changes, and the mandatory risk sharing that such a cap implies, were appropriate.

The regulation limits periodic interest rate changes to 1 percentage point for each 6-month period between rate adjustments. Authorization of a 1 percentage point limit is not an endorsement by this Office of ARM instruments that incorporate that limit; it is the maximum permitted periodic rate change. While the rule authorizes banks to design instruments which include the maximum permitted rate flexibility, such instruments may not be appropriate for all potential home buyers. For example, at mortgage interest rate levels of 12 to 15 percent, a 2-percentage point annual interest rate cap permits an annual increase in monthly payments of as much as 15 percent. An ARM with a 2-percentage point annual interest rate cap might be less appropriate for a borrower who anticipated an increase in income substantially less than 15 percent.

Aggregate Limits on Interest Rate Adjustments—We decided not to set an overall interest rate cap, but rather to permit overall caps, if any, to be established by the market. Limiting the ability of institutions to shift the risk of upward movements in interest rates to borrowers might lead to higher initial mortgage rates or might discourage long-term mortgage lending. Moreover, periodic interest rate caps will protect borrowers from extraordinary increases in their monthly payments.

Disclosures to Borrowers—The ARM regulation includes extensive disclosure requirements. In drafting the regulation, the Office was guided by the belief that the fundamental interests of both borrowers and lenders are best served by permitting lenders to compete freely in designing and pricing ARM's that meet borrower demands. However, the marketplace operates efficiently only if both buyers and sellers are well-informed about the transaction and fully understand the contractual agreement. A wide variety of mortgage instruments, including ARM's, presents borrowers with complex and unfamiliar borrowing options which will be difficult to evaluate. Without adequate disclosure, many borrowers considering an ARM might find it difficult to make the informed decisions that are critical to the efficient functioning of the market.

To address that concern, the regulation complements the flexibility of the permitted ARM instruments with the requirement for comprehensive borrower disclosures. Disclosures serve the two-fold purpose of educating borrowers about the nature of ARM's and equipping them to shop for the apporpriate ARM.

The regulation requires both an initial disclosure statement and notifications of periodic interest rate changes. The initial disclosure notice must provide prospective borrowers with a general description of an ARM, a description of the index to be used, a 10-year historical series of the index, the rules relating to changes in the interest rate and/or payment amount, and an example indicating the effect of a rapidly rising interest rate on the borrower's monthly payments for the first 5 years of the loan term. Moreover, national banks are certainly encouraged to go beyond what is minimally acceptable in educating their borrowers, as long as that is not done in a misleading fashion.

To avoid confusing borrowers or overburdening lenders, an effort was made to avoid excessively long disclosures. Accordingly, we designed a model disclosure form that ARM lenders may use. A number of banks that have initiated ARM programs have adopted those model forms and have not found the disclosure requirements of the regulation overly burdensome. Indeed, many view the disclosure notice as an important marketing tool to familiarize potential borrowers with ARM instruments.

Because the regulation relies primarily on disclosure rather than restriction of ARM terms to provide for borrower protection, the Office views failure to provide timely and substantively complete and correct disclosures as a serious violation of the regulation. The full range of the Office's available supervisory authority will be used to ensure compliance with the disclosure provisions of the final rule.

Affordability Concerns—The regulation does not require national banks offering ARM's to offer potential borrowers the option of a fixed rate mortgage. That has led representatives of community organizations to express concern that widespread use of ARM's would tend to exacerbate the difficulties of low and moderate income households and of minorities and women in purchasing homes. They argue that the future incomes of such borrowers might not keep pace with required monthly payments or that lenders might believe that those borrowers' incomes would not keep pace, making it more difficult for them to qualify for adjustable rate loans than for fixed rate loans. Conversely, those

groups also fear the possibility that, once having qualified for an ARM, such borrowers would face greater risks of subsequent default.

A number of consumer groups and a recent General Accounting Office report suggested that national banks be required to offer a fixed rate mortgage option to each potential borrower. We share the concerns of those groups about housing affordability but do not believe that the mandatory choice recommendation addresses them effectively. The housing affordability problem is more fundamental than the issue of fixed rate versus adjustable-rate mortgages. The source of the affordability problem is the underlying inflation in the economy. The risks of making long-term, fixed rate mortgages in an inflationary environment have already led lenders to set interest rates on those instruments at levels that many moderate income families cannot afford. That point was supported by testimony and comments which repeatedly suggested that the borrowers who are the subject of special concern have already been priced out of the traditional fixed rate mortgage market. Mandating the continued offering of fixed rate mortgages is not, therefore, a solution to the housing affordability problem.

Rather, the regulation is expressly intended to encourage and facilitate the involvement of national banks in residential mortgage lending. To the extent that banks are attracted into that market by the availability of a mortgage instrument suitable to an inflationary and volatile interest rate environment, the supply of mortgage credit will expand, and interest rates will tend to be lower than they otherwise would be. In contrast, if banks do not have a viable mortgage instrument available to them, many will not make mortgage loans or will build a substantial inflation insurance premium into the rate on fixed rate instruments.

Nevertheless, we believe that those concerned about housing affordability are correct in their perception that the nation has entered a period of significantly increased costs for housing and housing credit and that those costs may threaten the expansion of homeownership which the nation has enjoyed in recent decades. From our perspective, there are two answers to the problem of affordability of decent housing to low and moderate income people. The first is, of course, the reduction of inflation and therefore its impact on interest rates and housing prices. The second, is a more effective targeting of the very substantial amounts of governmental subsidy that flow through those markets. Housing policy has all too often fallen prey to the attraction of the off-balance sheet item and the hidden subsidy. Whether we are talking about loan guarantees, deposit interest rate ceilings, tax incentives or federal financing programs, each has had its cost, a cost necessarily borne by someone. If we are to appraise the worth, efficiency and equity of those programs, their costs must be identified. Similarly, we need to identify the beneficiaries of such intervention and the extent of benefits received to determine whether the stated objectives of public policy are being achieved in the most efficient manner.

Monitoring ARM Lending by National Banks

We intend to monitor systematically the effects of our ARM regulation on the supply of mortgage credit, both generally and to specific groups likely to experience difficulty in affording housing. We are considering a program to monitor national bank residential mortgage activity similar to the ongoing analysis of savings and loan associations' activities by the Federal Home Loan Bank Board. Some of that can be done through modifications to our data-collection forms currently in use in our fair housing home loan data system. If we are correct in our belief that the introduction of ARM's will significantly increase the role of national banks in the real estate market, it will be desirable to collect and analyze more detailed information on commercial bank mortgage commitments, mortgage originations and sales, terms and conditions on mortgages closed and portfolio holdings. Such information will provide a basis for future rulemaking and for recommending changes to existing statutes.

We also intend to monitor the impact of ARM's on low and moderate income areas and on women and minorities. Concern has been expressed that individual banks offering ARM's might fail to satisfy their obligations, as expressed in the Community Reinvestment Act, to help meet the credit needs of their entire communities, based on unsubstantiated perceptions that property prices or incomes of residents in low and moderate income areas will not increase in line with the general inflation rate. Similarly, it is possible that lenders might use loan evaluation criteria, including unsubstantiated projections of future income growth, that could have the effect of illegally discriminating against minorities, women or other groups protected by the Equal Credit Opportunity Act and the Fair Housing Act. If the results of our evaluation indicate an adverse impact on the objectives of those laws, the Office will consider amendments to the regulation and other actions to address the problem. If results of the evaluation suggest no adverse impact or a positive impact, the Office will consider eliminating the monitoring program and may also permit additional flexibility in the ARM's that national banks may offer.

Payment-Capped Mortgages—While the Office was considering a final ARM regulation, several mortgage lenders began offering adjustable-rate mortgage instruments with limitations on payment changes but not on interest rate changes. Those instruments do not conform to several limitations of our regulation. But, because we believe that market experimentation might be mutually beneficial to borrowers and lenders, we decided not to curtail development of such instruments.

Payment-capped mortgages (PCM's) provide for frequent and unconstrained interest rate adjustments which keep the rate on the mortgage at a fixed margin over a short-term security rate used as the interest rate index. The monthly payments on a PCM are fixed for a considerably longer period than is the interest rate. Interest rate fluctuations, therefore, alter the rate of amortization. If interest rates rise to a level such that the monthly payment does not cover interest charges,

negative amortization will occur—that is, the outstanding loan balance will increase. Conversely, when interest rates decline, principal is repaid more rapidly than scheduled. At the end of each fixed-payment period, the amount of the monthly payment is adjusted to amortize the loan fully over the remaining term to maturity at the interest rate in effect at the time of the payment change. To avoid sharp increases in monthly payment amounts, changes in monthly payments at each payment adjustment date are limited for the first 20 or 25 years of the loan. During the last 10 or 5 years of the loan, however, the payment cap is relaxed and the payment amount is increased to a level necessary to ensure full amortization of the loan by the end of the loan term.

PCM lenders find the frequent and uncapped interest rate changes attractive. In the absence of arbitrary limits on the movement of interest rates on the loan, they can maintain a constant interest rate margin and transfer the bulk of interest rate change risk to the borrowers. Some borrowers are willing to accept that risk and find payment-capped mortgages more appealing than interest rate capped ARM's because the monthly payment amount is held constant for relatively long periods of time. Maximum payment increases, for the first 20 or 25 years of the loan, are also known at the beginning of the loan term.

PCM's, however, raise concerns with respect to the appropriate limitations on payment changes, negative amortization and disclosure of information concerning those complex loan instruments.

The possibility of extensive negative amortization is of special concern because it introduces new elements of risk into the mortgage contract for both the borrower and the lender. Significant amounts of negative amortization may accumulate when the monthly payments are below what is required to amortize the loan fully over the loan term. Under certain interest rate scenarios, the outstanding loan balance can rise substantially and continuously over much of the loan term. Full repayment of the loan will then require either a sharp increase in monthly payments during the final years of the loan or a balloon payment at maturity. If a borrower sells the property prior to maturity, the possibility exists, under certain economic conditions, that the amount owed will exceed the sales price of the mortgaged property.

In spite of the concerns raised by PCM's, we believe that borrowers and lenders should have the opportunity to make such contracts, and therefore the Office has established a review process for both existing and proposed PCM plans.

To date, approximately 20 national banks have submitted their PCM plans for review. Because we believe that experimentation with different versions of the instruments will be valuable, we are not requiring comprehensive changes in most of the plans at this time. Instead we are informing PCM lenders of our concerns, requiring minor modifications in submitted programs and informing them that such concerns may be addressed by future regulation.

In the absence of regulatory constraints, lenders have addressed the potential problems associated with negative amortization in a number of ways. Limits on interest rate changes and the use of a relatively slow-moving interest rate index reduces the likelihood that the actual interest charge will exceed the monthly payment. Other lenders explicitly limit negative amortization either by absorbing any additions to the outstanding loan balance over a fixed percentage of the original loan amount, foregoing interest to unpaid accrued interest or limiting the borrower's liability if the loan is prepaid prior to maturity.

Secondary Market Developments

The secondary market plays an important role in our housing finance system by channeling funds to primary market lenders. The Federal National Mortgage Association's recently announced plan to launch a mortgage-backed securities program has the potential to expand greatly the importance of the secondary market by attracting billions of investors' dollars into the conventional mortgage market, just as the Government National Mortgage Association's mortgage-backed securities have channeled funds into the government-insured mortgage market. Plans call for some of those securities to be backed by adjustable-rate mortgages.

In response to the Office's and the Federal Home Loan Bank Board's regulations dealing with ARM's, the Federal Home Loan Mortgage Corporation and FNMA have developed ARM purchase plans. Most of the plans announced by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association have no limitations on periodic interest rate adjustments. Those plans without rate caps protect borrowers against extreme payment volatility through explicit limitations on changes in monthly payments, through relatively infrequent payment adjustments or through use of a relatively slow-moving interest rate index. To protect secondary market investors against the risks that negative amortization may present, the plans that permit negative amortization limit it to 25 percent of the original loan balance.

The Office will monitor carefully the secondary market's demand for the various types of ARM's. It is possible that rate-capped ARM's will be less attractive than nonrate-capped ARM's because some of the interest rate risk may be borne by the ultimate holder of the mortgage. Early indications are that secondary market investors have required that rate-capped ARM's yield approximately 20 to 30 basis points more than ARMs without caps.

However, we should emphasize that the market for ARM's is in an early stage of its development. The secondary market acceptance of various ARM's will provide valuable guidance to the Office regarding the need to modify or increase the flexibility of the ARM regulation.

In your September 16 letter, you asked that we comment on your draft bill that would grant the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association increased flexibility in purchasing mortgages originated more than 1 year prior to the purchase date. That would, of course, serve to increase the liquidity of mortgage portfolios. We are in

agreement with that proposal and support its enactment.

Future Office Initiatives

The Office is considering further initiatives in the residential mortgage lending area which might moderate the affordability problem and encourage bank residential real estate lending activity. Future actions under consideration include reviewing other types of mortgage instruments, pre-empting state restrictions which have the effect of discouraging fixed rate lending and proposing revisions to the statute controlling national bank real estate lending.

First, the Office intends to review the merits of other types of mortgage instruments designed to respond to the affordability problem. For instance, in a period of prolonged inflation accompanied by high and volatile interest rates, the standard fixed rate mortgage requires a monthly payment that is high, in real terms, in the early years of the loan. The nominal value of the monthly payment remains constant but, taking into account the effect of inflation on the purchasing power of the dollar, the real value of the monthly payment shrinks over time. Thus, many families who are good credit risks in terms of future income growth may have difficulty qualifying for a mortgage loan because of the high initial monthly payments. We intend to review carefully a wide variety of proposals designed to meet that problem, including the graduated-payment mortgage loan, the graduated-payment adjustable-rate mortgage loan and the price-level adjusted mortgage now offered in several countries.

Second, the Office has sent to the *Federal Register* for publication a proposed regulation which would remove or reduce a restriction that has the effect of discouraging long-term, fixed rate lending. Specifically, most conventionally financed mortgages have due-on-sale clauses requiring that the loan be repaid at the lender's option if the property securing the loan is sold. With the rise in mortgage rates, mortgage loans made several years ago with lower interest rates have become valuable "assets" for borrowers and costly "liabilities" for lenders. Various state courts have ruled in the last few years that due-on-sale clauses may be enforced only when lenders can demonstrate that their security is impaired by the transfer of the property. In addition, a number of state legislatures have passed laws prohibiting, in whole or in part, the enforcement of due-on-sale clauses. Those laws and rulings have provided a windfall to borrowers with low-rate mortgages in those states because they can sell their mortgage obligations as a valuable asset apart from the value of the encumbered property. As a consequence of those rulings, long-term fixed rate mortgage lending in those states has been discouraged. To address that issue, the Office has proposed a regulation which will, if it becomes a final rule, authorize national banks to enforce due-on-sale clauses according to their terms. That rule will apply to new loans and also to most loans made at a time when, under state law, it would have been reasonable to conclude that the clauses were enforceable.

The Federal National Mortgage Association, the single largest investor in residential mortgages, recently announced a policy of requiring lenders subject to state prohibitions of due-on-sale clauses to include a provision in their loans permitting the Federal National Mortgage Association to call the loans at the end of 7 years. Similarly, the Federal Home Loan Bank Board and the National Credit Union Administration have determined that their rules permitting enforcement of due-on-sale clauses pre-empt state law and that therefore federally chartered savings and loan associations and federal credit unions are not subject to such restrictions. The federal banking agencies are satisfied that Congress has granted them the authority to promulgate pre-emptive regulations in that area.

Third, the Office has been considering the effects of the restrictions imposed on national bank real estate lending by the provisions of 12 USC 371. Those restrictions are intended to put such real estate lending on a safe and sound basis, but we believe that they might unduly inhibit national bank participation in the evolving residential real estate finance market. In particular, the rigid loan-to-value ratios, the amortization requirements and the aggregate limitations on total real estate lending, construction lending and second-lien real estate lending often deter national banks from engaging in transactions that could at once be prudent and profitable and also satisfy the needs of their customers. We believe that, while those subjects are relevant to the sound management of real estate lending, rigid predetermined limitations are often at variance with evolving market realities. We intend, in the near future, to propose legislation to amend 12 USC 371 to authorize national banks to make real estate loans subject only to any limitations that the Comptroller might impose. That legislation, we believe, would allow national banks greater flexibility and encourage innovation, while at the same time ensuring that mortgage lending is being done prudently and with appropriate safeguards for consumer interests.

Shaping the Financial System in the Coming Years

Those initiatives, which are aimed at encouraging national bank involvement in mortgage lending, together with our actions with respect to ARM's, reflect our view that the public is best served and financial institutions are more stable and vigorous when they have sufficient powers to penetrate a wide range of markets with the broadest possible array of financial products and when they have sufficient flexibility to adapt quickly to a rapidly changing competitive and economic environment. The plight of the thrifts has demonstrated what can happen when powers are restricted and the flexibility to adjust is limited. Thus, providing greater flexibility in mortgage lending is but one aspect of a broader agenda of financial reform that must be addressed if regulated depository institutions are to retain their traditional role in serving the American economy.

Restrictions Separating Providers of Financial Services

First, and most importantly, the time has come to reexamine the laws, regulations and policies that have

served to separate the providers of financial services since the Depression. In essence, the matter is a simple one: Should households or companies be able to satisfy their needs for financial services at one stop, or should we continue to require specialization and predefined financial products through government fiat? And, turned around, can institutions which offer a limited array of services compete with those not so limited? The need to examine those questions is substantial in both the retail and corporate areas.

The Federal Home Loan Bank Board, with its draft legislation which would give federally chartered savings and loan associations powers at least as expansive as those of federally chartered commercial banks, has moved aggressively to respond to those questions. It is the Bank Board's view that deregulation on the liability side requires a parallel freeing of the asset side of the balance sheet and that savings and loans should have the freedom to determine the appropriate mix of their balance sheets. While the Bank Board's proposals raise a host of fundamental issues, including the need for distinct bank and savings and loan charters and the need for separate federal regulators, we concur in the thrust of the Bank Board's proposals. In our judgment, the time has come for the end of governmentally mandated specialization of depository institutions. The current state of the thrift industry illustrates all too well the need for appropriate diversification of a portfolio of financial assets.

While that is an important step, an even more fundamental examination of the laws, regulations and policies that separate the providers of financial services is needed. A comprehensive reexamination implies, of course, a systematic review of the Glass-Steagall Act. The debate should not, however, be limited to a traditional formulation of the issues. The roles of all providers of financial services—insurance companies, retailers, brokerage firms, to name a few—and the appropriate function of the government in defining those roles should be addressed.

In the consumer financial services area, it appears that in the marketplace of the 1980's, consumers are sometimes willing to forego the protections offered by highly regulated depository institutions in favor of the convenience and benefits offered by unrestricted financial services supermarkets. An example is the phenomenal popularity of money market mutual funds over federally insured, but lower yielding, deposit accounts. The basic public policy issue that must be debated and resolved is whether the risks of removing given safeguards and protections are unacceptable regardless of the benefits obtainable from unregulated competition. The process of debate and resolution of that issue must, of necessity, include an examination of the appropriateness of the existing rules of the game, which continue to perpetuate competitive inequalities among depository institutions and between the depository industry and other providers of financial services.

Our own preference is for substantial deregulation in the consumer financial services area. If insurance companies or multinational financial firms can own brokerage firms, if brokerage firms can acquire trust companies, if retailers can own savings and loan associations, if Merrill Lynch can offer brokerage services (real estate, commodities, securities and insurance), money market mutual funds, cash management accounts, credit cards—the full panoply of consumer financial services—then it seems that the marketplace is already far down the road of dismantling product segmentation. The time has come, therefore, to begin the process of redrawing the roadmap.

In the corporate finance area, the need for reexamination is also apparent. The functions of commercial banks and investment banks should be considered in light of the evolution of the various forms of financing by governmental and corporate customers. For instance, since enactment of the Glass-Steagall Act prohibitions in 1933, municipal revenue bonds have become an increasingly important method of state and local government financing. Unlike general obligation bonds, however, municipal revenue bonds cannot be underwritten by commercial banks. Similarly, many of the larger corporations now view short-term borrowing in the commercial paper market as a substitute for short-term loans. Yet, the authority to sell third party commercial paper has been subject to judicial challenge by the securities industry on the theory that such activity is prohibited by Glass-Steagall.

In short, we are repeatedly reminded of the fact that financial and technological innovations have rendered obsolete the ideas and definitions of the 1930's which are built into the law today and define for us the shape of the playing fields for competing providers of financial services to the corporate sector. The provision of financial services in our economy is too important to be pursued in an inefficient and archaic manner. Accordingly, the current restrictions on the roles which depository institutions may play in providing services to corporate customers should be broadly reexamined. That reassessment would focus on the appropriateness of the Glass-Steagall prohibitions and on what lines of demarcation make sense with respect to the financial needs of corporate customers.

Geographic Restraints

Second, the time has come for a decision on eliminating geographic restrictions on commercial banks embodied in the Douglas Amendment and the McFadden Act. We believe that such restraints on bank expansion are anticompetitive and impede the effectiveness and efficiency of the financial system. In raising that issue, we want to emphasize our concern for the future of commercial banking.

Preservation of the McFadden Act and the Douglas Amendment restrictions will continue to provide some banks with some protection from other bank competitors. In the meantime, however, institutions that are not similarly restricted, such as Merrill Lynch, American Express and savings and loan associations, will have ample opportunity to increase their share of the product markets in which banks compete.

Moreover, since the beginning of 1980, federal savings and loan associations have been permitted to establish branches on a statewide basis. In addition they are permitted, in certain circumstances, to establish branches across state lines. The merger involving

savings and loans in Florida, California and New York is the most recent example. When savings and loans implement their new powers, statewide and interstate branching will give them a potentially substantial competitive advantage over banks.

Among commercial banks, the interstate activities of loan production offices, Edge Act corporations and nonbank affiliates of bank holding companies are making McFadden Act protection virtually meaningless in every area but deposit competition. Even in that area, advances in communications technology and deposit deregulation are reducing significantly the importance of such protection.

There is no plan for deregulation which is perfectly equitable or which eliminates the possibility of some dislocation. However, further study and delay will not provide additional illumination, nor will it make the decision about how to proceed any less difficult. Nevertheless, it should be clear that interstate banking is already a reality. The power of the marketplace, propelled by technological innovations that reduce costs in an inflationary environment, is too great to stop. That leads inescapably to the conclusion that, whatever the merits of the past debate on the McFadden Act and the Douglas Amendment, the competitive vitality of the commercial banking system depends importantly on developing solutions to the problems posed by those laws.

Deposit Deregulation

A third item on the agenda of financial reform is deposit deregulation. The process of phasing out interest rate ceilings must continue apace. To waver in the policy commitment set forth in the Depository Institutions Deregulation and Monetary Control Act of 1980 might damage severely—perhaps irreparably—the role of deposit-taking institutions, thrifts and commercial banks alike, as providers of financial services to individuals. In June, the Depository Institutions Deregulation Committee charted a 4-year schedule to completely eliminate ceilings on time deposits, which was to begin on August 1, 1981, with elimination of rate ceilings on time deposits having original maturities of 4 or more years. However, on July 31, 1981, the U.S. District Court issued a ruling which invalidated those portions of the phase-out schedule that eliminated ceilings and therefore interest rate differentials on types of accounts in existence on December 10, 1975. The Depository Institutions Deregulation Committee intends to appeal the court decision. At the same time, the committee is considering a new 4-year schedule for deregulation through creation of new time deposit instruments. The proposed schedule would begin in February 1982, and result, by February 1, 1986, in a complete set of new time deposit instruments in every maturity range not subject to rate ceilings.

If inflation, inflationary expectations and interest rates remain high, we will be in a difficult situation. The growth in unregulated deposit substitutes, which is already considerable, will continue to erode the deposit bases of banks and thrift institutions. Moreover, the earnings position of thrifts will continue to weaken. Though bold, the committee's phase-out program may not be bold enough under such circumstances. However, faster deregulation will exacerbate the plight of the thrifts. Thus, we may have to choose between slowing the pace of deregulation of deposit rate ceilings and restricting all deposit substitutes or letting the market work. Either choice means allowing some depository institutions, including many thrifts, to disappear or requires providing them with temporary support.

Unfortunately, this dilemma foreshadows a longer run danger. If we resort to the expedients of regulation and restraint in the short- and medium-run, then in the longer run there will be a temptation to renege on the fundamental decision to deregulate the deposit side of the balance sheet. Thus, the challenge for the committee and more broadly for the government is a serious one if inflation is not brought speedily under control.

In that regard, there is immediate need to agree on a strategy for addressing the earnings problems of thrift institutions in the short-run while providing all deposit-taking institutions with the flexibility to compete for funds in the marketplace. We should have tools, for use if rates remain high, which provide adequate regulatory flexibility both to facilitate the merger of weaker institutions and, where appropriate, to assist institutions *in extremis*.

The agenda before us is sweeping. It might well be criticized on the grounds that undertaking such change is unrealistically ambitious and politically impossible. In retort, we would suggest simply that there is little choice.

The 30-year, fixed rate mortgage was a venerated element of our housing finance system and has served our nation well. The move to a world of greater flexibility has been revolutionary. Our Office has not taken action to facilitate that change lightly. We firmly believe that changed circumstances demanded that step.

Other steps equally revolutionary are required. No aspect of the framework of law and regulation governing the provision of financial services should be considered sacred. For the reasons we have suggested, the business of providing financial services to individuals, to companies and to governments will change radically. Law, regulation and public policy can facilitate orderly change, preserving the worthwhile values of our existing institutional framework. Or, they can serve as a source of uncertainty, an arena for gamesmen and an impediment to deposit-taking institutions. Which occurs is a matter largely in the hands of Congress and the regulatory authorities. In our judgment, nothing less than the long-run health and stability of the financial system is at stake.

Statement of Charles E. Lord, First Deputy Comptroller, before the Senate Committee on Banking, Housing and Urban Affairs, Washington, D.C., October 30, 1981

Mr. Chairman, members of the committee, it is a pleasure to have the opportunity to offer the views of the OCC on the far ranging financial reform legislation that is the subject of these hearings. The committee is to be complimented on its continuing thoughtful efforts to deregulate and strengthen the nation's financial institutions and to promote a viable and competitive financial sector.

The state of our financial system today could be likened to a river. This metaphorical river flooded its banks seasonally, year after year, and the people who lived in the community near it finally built a dam to control the water's flow. They took advantage of the protection of the dam to build irrigation projects and new developments along the fertile, now-sheltered shore. Everyone prospered. The dam worked reasonably well, but floods continued to occur and, in fact, seemed to get worse each time. So the people built a new dam after each new flood.

They continued to prosper, until a flood came along that did not fit the regular cycle. The water level kept rising, backing up behind the dams until it finally reached the breaking point. And when it did break loose, the irony was that it unleashed a force far more devastating than would have occurred if the dams had never been erected. In fact, if the dams had never been there, the people would never have built so extensively near the water's edge, and thus would not have been so vulnerable when their protection, finally too far out of tune with natural forces, was swept away.

When the survivors came back to rebuild their community on foundations strong enough to survive the flood, they found the wisdom to learn from their mistakes. They designed a new community that could adapt to future flooding. And they did not build any more dams.

The moral of this fable is that when artificial systems become fundamentally out of harmony with natural forces, nature will ultimately be the victor. That truism is as valid for the forces of the marketplace as it is for the power of a river. Like the community in the story, our public policy for years has tried to dam up or rechannel the natural flow of our credit and savings markets to accomplish laudable but short-range goals. We have used an enormous array of artifical allocational devices, ranging from Regulation Q to limits on the products, pricing and location of providers of financial services to a stream of government programs like secondary markets for housing and a host of tax incentives. Those systems seemed to accomplish their goals, after a fashion, for many years. When our economy was hit, however, by an inflation and interest rate spiral that was the equivalent of a great flood, the market took its natural course. It first just flowed around the governmentally created obstacles, cutting new channels like money market mutual funds. And then, when interest rates continued to rise and the pressure became too great, the market simply began to sweep away the artificial barriers in its path.

Unfortunately, that dam-breaking process is causing more damage than was necessary because it has released pressures built up over a long period of time under the old allocational structures. Even worse, the sudden changes have caught many people unaware who, like the people lulled into a false sense of security by the shelter of the dam, had come to rely on the old system for their livelihood or for fulfillment of their dreams. That group, most notably the thrift and housing industries and people who hope to buy or sell a home, face a very difficult transition to a new environment.

Nevertheless, like the survivors of the flood, we believe our government and business sectors are finding the wisdom needed to adapt and thrive in this new world. We believe that there is a growing recognition that the key to our future prosperity and productivity is to dismantle the dams, to stop seeking government shelter from competitors and to learn better how to reap the benefits for all of us that can be generated by free, efficient competition.

It is particularly heartening to see that this committee is continuing on the path of major financial reform legislation that began with the Depository Institutions Deregulation and Monetary Control Act of 1980. The principal bill before you, S. 1720, deals with a host of issues ranging from broad new powers for financial institutions and emergency measures to assist troubled institutions to numerous technical amendments designed to streamline the banking laws. S. 1703, introduced at the request of the Federal Home Loan Bank Board, would similarly provide broad new powers for thrift institutions. S. 1721 would provide emergency measures for troubled institutions and would take a first step toward reorganizing the federal financial supervisory agencies by merging the federal deposit insurance functions for savings and loan associations and credit unions into the Federal Deposit Insurance Corporation (FDIC). Finally, S. 1686 would broaden the eligibility requirements for NOW (negotiable order of withdrawal) accounts offered by financial institutions.

Despite their broad and varied scope, those bills collectively, and S. 1720 in particular, are for the most part a response to the changes that are occurring in the financial services marketplace. In that context, it is important to recognize both their potentials and their limitations. They all contain timely and important provisions that would help to conform our legal framework to the emerging realities of the market. On the other hand, we feel strongly that they should not be viewed as a comprehensive response to those new realities. For one thing, some of their provisions, in the process of expanding the powers of one type of financial institution, actually create new competitive handicaps for other types of financial institutions. More importantly, all of those bills fall short of addressing the full range of changes affecting the market.

We believe there is a critical need for a more comprehensive response to the effects of marketplace

changes in the near future. In shaping such a response, we believe there is a need to focus directly on the fact that the competitive financial arena is being fundamentally transformed by the entry of new players. There are new entries or market expansions almost daily, by major retail stores, major investment houses, industrial firms, credit card companies, insurance companies, foreign banks and others. Those entities have seized the lead in pioneering new financial structures and products. Depository institutions, by comparison, are like a prize fighter with one hand tied behind his back. They are highly regulated businesses in a contest with other businesses that are far less regulated.

That one-way breaching of the historic barriers between banking and nonbanking activities is creating inequities and potential market dislocations which must lead, we believe, to a fundamental rethinking of the roles of depository institutions. Thus, while we support prompt enactment of most of the deregulatory proposals before the committee, we hope that they will be recognized as only a step in the direction of more comprehensive reform.

Extraordinary Supervisory Powers for Dealing With Troubled Institutions

Provisions of S. 1720, S. 1721 and S. 1703 would expand the flexibility of the federal regulatory agencies to assist troubled depository institutions in several ways. First, the FDIC and the Federal Savings and Loan Insurance Corporation (FSLIC) would gain new authority and flexibility to provide financial assistance, enabling troubled institutions to continue operating through short-term adversity. Second, authority to provide financial assistance to facilitate mergers or acquisitions of troubled institutions would be enhanced. Third, the available options for assisting weak or failed institutions through mergers with sound institutions would be increased by new provisions permitting cross-industry and interstate combinations under certain circumstances. Finally, other provisions of the bills would clarify or extend certain features of present statutes prescribing the depository institutions regulatory authorities' powers for dealing with problem situations.

In general, we support the enactment of expanded federal authority to assist and facilitate mergers and acquisitions of threatened institutions as part of broader legislation to resolve the present problems of depository institutions, particularly thrift institutions. In our opinion, the regulatory tools currently available are adequate to deal with foreseeable problem situations. Nevertheless, given the strains on many depository institutions today and uncertain prospects for the future, it seems prudent to provide for the additional financial assistance powers proposed in those bills, together with the expanded powers proposed for thrift institutions, to ensure their continued long-term viability.

We will address each of the bills' five major provisions dealing with extraordinary supervisory powers.

We favor, first, the provisions of Section 161(2) of S. 1720, which would expand the FDIC's authority to provide financial assistance "whenever severe financial conditions exist which threaten a significant number of insured banks." Under such conditions, the FDIC could give financial aid to an operating bank without satisfying the present requirement of Section 13(c) of the Federal Deposit Insurance Act that the bank's continued operation be "essential to provide adequate banking service in the community." That would bring the FDIC's ability to assist a troubled institution more in line with the existing authority of the FSLIC, and the FDIC would gain broader authority to assist when severe financial conditions exist.

Second, we also support several provisions that would increase flexibility for financial assistance to facilitate acquisitions of troubled institutions. Section 154 of S. 1720 would authorize the FSLIC to provide financial assistance to *any party* acquiring a troubled FSLIC-insured institution. Section 162 of S. 1720 would also permit the FDIC to assist takeovers of FDIC-insured banks by FSLIC-insured institutions, which are not now eligible for FDIC assistance. Similarly, S. 1721 would give the combined FDIC insurance fund the same broad authority it now possesses with regard to insured banks: to provide various forms of financial assistance to facilitate merger, consolidation or purchase and assumption transactions involving a troubled or closed insured financial institution of any type.

Third, we support but have procedural reservations regarding the proposals in S. 1720, S. 1721 and S. 1703 which would give the federal regulatory agencies authority to permit emergency acquisitions of banks and thrift institutions, under specifically limited conditions, without regard to existing restrictions on interstate and cross-industry combinations.

Options available to the FDIC to sell a large closed bank out of receivership through an assisted purchase and assumption transaction would be expanded by provisions of Section 165 of S. 1720 and Section 126 of S. 1721. The new authority would apply only to banks with more than approximately $2 billion in assets. That threshold level is defined as a percentage of domestic assets and would probably increase over time. Such large failed banks could be acquired by a subsidiary of an out-of-state depository institution or holding company, but only if certain conditions are satisfied. Acquirers in the same state and in adjacent states would be given first and second priority, respectively, in the bidding process. If the best initial offer comes from an out-of-state bidder, an opportunity to submit a new offer would be given to the within-state institution among the acceptable initial bidders which made the best offer on the first round. Similarly, if the choice is among out-of-state bidders and the best offer is from an institution in a nonadjacent state, the highest initial bidder from an adjacent state would be given a chance to re-offer. The bills also require that before soliciting bids, the FDIC must consult the state bank supervisor in the state in which the closed bank was chartered, regardless of whether the bank is state- or federally chartered. If the state supervisor objects, the FDIC may use its authority only after a unanimous vote of its board of directors.

While we generally support those emergency bank acquisition provisions of the bills, there are two fea-

tures we consider unnecessary. First, we would oppose the $2 billion threshold, in view of the fact that the largest banks in some states are considerably smaller than that. To maximize options for managing the closing of large banks in the best interests of the affected communities, we would prefer no threshold or a significantly lower one. Although some observers fear that measure could open a floodgate of interstate or cross-industry acquisitions, we believe such concern is vastly exaggerated given the other strictly limiting conditions in the bills.

Our other concern is that requiring consultation with state bank supervisors at the stage of soliciting bids could complicate or delay already sensitive proceedings. Informal consultation occurs frequently now, and we feel that mandating consultation is unnecessary. While we would not object to a requirement for non-binding consultation when a state-chartered bank is to be closed, we think mandatory consultation is inappropriate, in principle, when the disposition of a failed national bank is at stake. That requirement would significantly and un-necessarily interfere with the ability to carry out our statutory mandate as chartering authority. We also oppose the provision that requires a unanimous vote of the FDIC's Board of Directors to override the objections of a state bank supervisor.

With regard to extraordinary bank acquisitions, we also feel that S. 1721 is preferable to S. 1720 in that it would permit takeover of a closed bank in a purchase and assumption transaction by "an out-of-state insured depository institution, bank holding company or savings and loan holding company" rather than by only a bank or bank holding company. That broader language would provide thrift institutions an opportunity that is symmetrical with the proposed role of banking organizations in emergency thrift acquisitions and would increase the number of potential bidders for a closed bank.

Fourth, we support the goals of Section 151 of S. 1720 and Section 401 of S. 1703 which would extend or clarify regulators' authority to permit cross-industry and interstate acquisitions of troubled thrift institutions, but again question the need for certain of the provisions.

Under the bills, the FSLIC would be empowered to authorize such acquisitions whenever it determines that:

> severe financial conditions exist which threaten the stability of a significant number of insured institutions, or of insured institutions possessing significant financial resources.

Section 153 of S. 1720 and Section 403 of S. 1703 would also provide for emergency conversion of mutual thrifts to stock charters and would specify that the Federal Reserve Board may expedite procedures for emergency acquisitions of converted thrifts. The bills stipulate that the FSLIC must have as its "paramount consideration" the need to minimize financial assistance required to support emergency acquisitions. Subject to that constraint, the FSLIC would be directed to give priority to acquisitions involving institutions of the same type and within the same state as the institution being acquired. An acquirer of the same type but in a different state is to be preferred to a different type in the same state, and lowest priority is assigned to interstate cross-industry combinations.

Current law authorizes the Federal Home Loan Bank Board to permit interstate combinations of thrifts under certain circumstances. S. 1720 and S. 1703 would supplement that authority. Similarly, the Federal Reserve Board, in our view, already has authority to approve interindustry acquisitions. However, the legislation under consideration would limit the Federal Reserve's existing authority by imposing a complex procedural overlay and unnecessary limitations on emergency interindustry acquisitions.

We favor the availability of regulatory tools of the kind permitted by Section 153 of S. 1720 and Section 403 of S. 1703 for dealing with emergency thrift acquisitions. We are concerned, however, about whether the bills, with their complex limitations on the Federal Reserve Board's powers, would be superior to the broader authority of existing law, despite the fact that the Federal Reserve Board's current authority in that area might be subject to judicial challenges. We would, therefore, prefer retention of the existing regulatory tools to the complex procedures and limitations currently proposed.

Finally, we support Section 501 of S. 1720, which would authorize the National Credit Union Administration to permit emergency combinations of insured credit unions without regard to common bond or state law limitations and would clarify the National Credit Union Administration's ability to arrange purchase and assumption transactions involving acquisition of troubled credit unions by other types of depository institutions.

We also support the bills' various other provisions to enhance or clarify the regulatory agencies' powers and increase resources available for dealing with emergency situations. For example, the FSLIC would be authorized to borrow from the federal home loan banks or to tap its secondary reserves if conditions require; the National Credit Union Share Insurance Fund would be empowered to borrow from the Central Liquidity Facility in extraordinary circumstances, and the Central Liquidity Facility could act as an agent of the Federal Reserve to channel funds to credit unions in an emergency. The receiver of conservatorship authorities of FSLIC and the National Credit Union Administration would be clarified.

Expanded Thrift Asset and Liability Powers

The provisions of S. 1703 and Title I of S. 1720 relating to expanded federal assistance and interstate and cross-industry mergers and acquisitions, when combined with enhanced asset and liability powers for federal savings and loan associations, are components of a comprehensive federal solution to existing industry problems. Those provisions are collectively designed to respond both to the immediate pressures facing thrift institutions and to the long-run need to give them realistic tools to compete. The bills would expand very substantially the asset and liability powers of federally

chartered savings and loan associations and federally chartered savings banks

We strongly support expanded powers for thrift institutions as an essential part of the proposed law. The phase-out of deposit rate controls, already under way, must be matched by an accompanying expansion of powers to enable thrifts to avoid a recurrence of their present earnings problem in the future. Furthermore, we cannot expect institutions which can offer only a limited array of services to compete with institutions which are not as limited. Thus, in our judgment, the time has come to end governmentally mandated specialization of depository institutions.

The additional powers provided for under S. 1720 effectively remove most of the restrictions that currently distinguish savings and loan associations from commercial banks. The major expanded thrift liability power would be the authority to accept demand deposits from any customer, including corporations. The major provisions regarding lending and investment powers would be (a) removal of the existing restrictions on investing in commercial loans and in loans for agricultural purposes, (b) elimination of the existing 20 percent limitation on investments in consumer loans, corporate securities and commercial real estate loans and (c) expanded authority to invest in state and local revenue bonds and certain types of open-end mutual funds. Other distinguishing characteristics between thrift institutions and commercial banks would be left unchanged.

The proposed changes raise a host of other fundamental issues, including whether there is a continued need for distinct bank and savings and loan charters and, thus, the need for separate federal regulators. Until those fundamental issues are resolved, the proposed legislation has the potential to impart a competitive advantage to thrift institutions because of remaining differences which distinguish thrifts from banks, such as the 1/4 point savings rate differential, different capital requirements, different tax treatment, differences in permissible holding company activities and differences in branching powers.

We recognize that it would be impractical, if not impossible, for the Congress to deal with all of those issues simultaneously. Notwithstanding the temporary inequities for banks that might result from the legislation, therefore, we believe that our first priority must be to address the immediate problem of providing the thrift industry with the flexibility to adjust to changed economic and marketplace circumstances. However, we would urge the Congress to review expeditiously and carefully the full range of potential competitive inequities stemming from statutes and regulations among providers of financial services. Those inequities should be removed as rapidly as possible to ensure fairness to all competitors and a rapid transition to a better, more competitive provision of financial services to the public.

Consolidation of the Federal Deposit Insurance Funds

S. 1721, the Federal Deposit Insurance Consolidation Act, would consolidate the deposit insurance functions of the FSLIC and the National Credit Union Share Insurance Fund into the FDIC. The bill would restructure the board of directors of the resulting expanded FDIC and would make a number of other technical amendments necessary to or consistent with the consolidation.

The consolidation of the three federal insurance funds would, in our judgment, be a step in the direction of a simplified and more effective regulatory system. While such a consolidation could proceed independently, we urge the committee to consider the proposal carefully next year in the broader context of how to design an equitable and effective framework to supervise financial institutions in a rapidly changing financial world.

The historic basis for separate deposit insurance systems stemmed from fundamental differences in the nature and activities of the insured institutions. As the historical differences among types of depository institutions diminish, separation has less and less relevance.

We recognize that a consolidation of the insurance funds at this time might be helpful in preparing to respond to the problems of severely troubled institutions in the period ahead. Combining the financial resources of the funds would reduce the pressure on any single fund likely to experience great strain. In addition, creating a single organizational entity would greatly facilitate efficiency should there be a need to deal simultaneously with large numbers of institutions through the insurance mechanism. That efficiency would be extremely valuable if cross-industry mergers and acquisitions are used as a means of dealing with failing institutions, as proposed in the bills before the committee.

Nevertheless, enactment of that legislation would have significant ramifications for the larger question of how to rationalize and streamline the entire federal financial institutions supervisory apparatus. In addition to having three federal agencies that insure deposits, there are also five agencies and two quasi-agencies that supervise the activities of depository institutions, two that supervise financial institution holding companies, at least three that supervise securities activities and at least eight that implement consumer protection statutes affecting credit or deposits. Interrelationships among the agencies are highly complex. For example, the OCC serves as a statutory director of the FDIC. The Federal Financial Institutions Examination Council and the Depository Institutions Deregulation Committee have almost, but not completely, identical members who have varying authority to cast votes and who can play different and even conflicting roles in their capacities with each agency and their own supervisory agencies. The Federal Home Loan Bank Board members also constitute the board of the Federal Home Loan Mortgage Corporation, a quasi-governmental corporation which, itself, is highly duplicative of two other government-created entities which perform a federal secondary mortgage market and mortgage bond guarantee function.

The five federal agencies that supervise depository institutions collectively have responsibilities ranging from the Federal Reserve Board's monetary policy role to supervision of depository institutions, supervision of

holding companies, deposit insurance, chartering, provision of central liquidity, check clearing, statutory and regulatory enforcement, writing regulations for their own and other institutions, implementing their own and other agencies' regulations and advocating the interests of the industry they supervise. However, no agency has all of those functions, and no two agencies have the same specific powers or even the same general combination.

That convoluted system is overlaid by the functions of the 50 state financial institution supervisors. Here again, the federal agencies do not have consistent roles with respect to state-chartered institutions. Of the three separate federal agencies that regulate commercial banks, one oversees national banks and two share the supervision of subsets of state-chartered banks. The other two agencies have direct supervisory responsibility for federally chartered savings and loans, savings banks and credit unions and have indirect responsibility through their insurance functions for state-chartered, federally insured savings and loan associations and credit unions, but not for savings banks. The federal insurance regulation of state-chartered savings banks is the responsibility of one of the three commercial bank regulators.

That description, as complicated as it may seem, does not begin to convey the differences that emerge from the specific language of all the statutes involved.

It could be argued that the current regulatory structure has always been unnecessarily complex. As stated earlier, however, the real need for reconsidering it now arises from the fact that the financial industry is undergoing a revolution that is erasing the distinctions on which the existing supervisory structure was originally based. The marketplace has made the historical molds obsolete. Different types of institutions are increasingly competing head to head. The Depository Institutions Deregulation and Monetary Control Act of 1980 responded to those developments with a giant step toward giving all types of depository institutions similar powers. The bills before this committee would go still further in that direction. Given that reality, having five standing and two special agencies to regulate depository institutions is anachronistic and inefficient.

Furthermore, that new competitive world is not confined to depository institutions. As the committee is well aware, the arena of financial services competition today includes many institutions in addition to banks and thrift institutions. The aggressive entry of both financial and nonfinancial companies into fields once traditionally viewed as banking has breached the historic barriers between banking and commerce. In comparison to banks, those companies are virtually unregulated, giving them a significant competitive edge—over and above the fundamental advantage they have because they can move into the banks' traditional markets, but the banks cannot move into theirs.

A revised federal regulatory structure that is both effective and equitable should flow directly from the underlying structure and operation of the marketplace. Agency restructuring should not wait until marketplace changes have played themselves out. On the contrary, it will be important to put a rational and comprehensive system in place to ensure stability and efficiency during those transitional years. We do believe, however, that restructuring should be based on a more comprehensive approach than just consolidating the deposit insurance functions.

Should the Congress decide to proceed with consolidation of the federal insurance funds at this time, we would support most of the specific provisions of S. 1721. In particular, we would support the removal of the OCC from the FDIC board. We suggest, in that regard, that it would be better to retain the present three-member board structure, permitting no director to be a principal of another supervisory agency, rather than to create the five-member board proposed in the bill. It has been our experience that the current three-person board system operates well.

We would also support the technical conforming amendments of S. 1721 dealing with agency reports under the Change in Bank Control Act, the authority for the FDIC to act as receiver for closed federal savings and loan associations and credit unions and the availability of a right of first refusal for stockholders of closed banks to purchase stock in new banks.

Investment Company Activities

We also support the provisions of S. 1720 that would eliminate some of the restrictions placed on banks by the Glass-Steagall Act. Section 302 of S. 1720 would amend the Investment Company Act of 1940 (Investment Company Act) to authorize commercial banks and other financial institutions to sponsor, operate and provide advisory services to investment companies and to engage in the distribution of the securities of any investment company, provided that the financial institutions' officers and employees involved in distribution activities meet certain standards of training, experience and sales practices. The appropriate financial institution regulatory agencies would establish and enforce such standards.

If enacted, that section would remove, in part, the barrier between the commercial banking and securities industries that was erected almost 50 years ago by the Glass-Steagall Act. In recent years, the product segmentation created by that act has been eroded by nondepository institutions offering new financial products and services, some of which are functionally equivalent to those offered by commercial banks. In contrast, commercial banks are severely hampered in their ability to offer competitive securities-related financial products and services by the Glass-Steagall Act, as interpreted by the courts. That regulatory imbalance, if permitted to continue, may have significant adverse consequences for the commercial banking industry.

Section 302 would authorize banks and other financial institutions to operate all classes of investment companies, including so-called money market mutual funds. Commercial banks are particularly well suited to provide a broad range of such investment management services to the public. For decades, banks have managed investment portfolios in their fiduciary capacities as executors, trustees and managing agents

of funds committed to their custody. Bank trust departments manage employee benefit trusts, institutional and corporate agency accounts and personal trust and agency accounts. Moreover, for more than 50 years, banks have managed investment portfolios on a commingled basis for common trust funds and other collective investment funds which banks maintain in a fiduciary capacity. National banks which provide investment management services in a fiduciary capacity are, of course, subject to the jurisdiction of OCC and must comply with various requirements designed to safeguard against possible abuses and to ensure compliance with safe and sound banking principles. OCC has developed considerable expertise in connection with the administration and enforcement of those requirements.

Section 302 contemplates that investment companies operated by financial institutions, unlike bank common trust funds and other collective investment funds which banks maintain in a fiduciary capacity (and which are excluded from the definition of investment company by Section 3(c) of the Investment Company Act), would be subject to the registration and other requirements of the Investment Company Act. We have certain concerns about that proposed jurisdictional approach.

First, the Investment Company Act regulatory scheme is specifically designed for the collective investment services of nondepository institutions. Consequently, its primary purpose is to protect investors against certain abuses and conflicts of interest, and it does not address concerns relating to the safety and soundness of banks which sponsor investment companies. If Section 302 is enacted, we believe that the appropriate bank regulatory agencies should have clear authority to adopt, administer and enforce requirements designed to ensure safe and sound banking practices in connection with bank sponsorship of investment companies.

Second, because both the Investment Company Act and OCC's trust regulations are intended to safeguard against self-dealing, conflicts of interest and other abuses, they contain a number of overlapping features. For example, the Securities and Exchange Commission and OCC conduct periodic inspections of collective investment vehicles within their respective jurisdictions to ensure compliance with applicable laws and regulations.

Accordingly, assuming that the Investment Company Act is determined to be the appropriate regulatory vehicle, we believe the bill should delineate the respective responsibilities of the bank regulators and the Securities and Exchange Commission to avoid duplicative jurisdiction and interference with the bank regulatory process. The committee may wish to consider whether certain regulatory responsibilities under the Investment Company Act, such as inspection and enforcement responsibilities, should be specifically delegated to the appropriate bank regulatory agencies. That would parallel the bill's provisions authorizing the appropriate bank regulatory agencies to establish and enforce standards regarding training, experience and sales practices of bank officers and employees who participate in the distribution of investment company securities.

The concept of shared regulatory responsibility between the Securities and Exchange Commission and the bank regulatory agencies with respect to securities activities of financial institutions is not a new one. For example, OCC is responsible for the administration and enforcement of various provisions of the Securities Exchange Act of 1934 and its regulations, such as periodic reporting, proxy solicitation and tender offer requirements, which apply to national banks having a class of securities registered with the OCC under the act. In addition, OCC is primarily responsible for administering and enforcing those provisions of the act and those rules of the Municipal Securities Rulemaking Board which apply to national banks acting as municipal securities dealers.

Our experience indicates that this concurrent jurisdictional approach provided by Congress in the Exchange Act works well and represents an effective and efficient use of limited government resources.

Commercial Bank Underwriting of Revenue Bonds

We also support Section 301 of S. 1720 which would take another significant step toward fostering financial market competition. That section would amend the Glass-Steagall Act to enable national banks and state banks which are members of the Federal Reserve System to underwrite and deal in revenue bonds of state or local governments (except special assessment obligations and industrial revenue bonds). We believe that bank underwriting and dealing in revenue bonds will benefit state and local governments and, accordingly, we strongly support enactment of Section 301.

Commercial banks have historically engaged in substantial government financing activities. When the Glass-Steagall Act was enacted in 1933, most municipal debt issues were in the form of general obligation bonds, so that the prohibition on underwriting revenue bonds was not a major impediment to bank activity in the municipal bond market. In recent years, however, state and municipal governments have increasingly turned to revenue bonds rather than general obligation bonds to finance public projects and services. In 1980, revenue bonds constituted approximately 80 percent of all newly issued municipal debt. That trend has resulted in a substantial decline in bank activity in the municipal market.

In our opinion, permitting bank underwriting of revenue bonds would not have any adverse effect on the safety and soundness of national banks and would not lead to unfair competition or the potential for conflicts of interest by banks in underwriting of bonds, as critics have argued.

The risks associated with underwriting and dealing in municipal revenue bonds are similar to those involved in dealing in other forms of municipal bonds. The credit market and interest rate analyses associated with all forms of municipal securities issues are much the same. Bank underwritings of general obligation bonds have not resulted in significant problems, and we therefore see no problems arising from expanded underwriting authority for banks.

Nor would such expanded authority, in our opinion, increase the potential for conflicts of interest on the part of bank underwriters. Commercial banks already engage in a wide range of municipal securities-related activities, including underwriting and dealing in municipal general obligations and certain types of municipal revenue securities and the brokering of municipal revenue securities for the accounts of others. Experience demonstrates that banks have performed well in those diverse roles.

The specific conditions which Section 301 would impose on bank underwriting and dealing in municipal revenue bonds are comparable to those that apply to municipal general obligation bonds, and we consider them appropriate safeguards against banking risks and potential abuses. We believe that Congress should permit the appropriate bank regulatory agency to adopt, through rulemaking and the exercise of its supervisory authority, those and other conditions to ensure safe and sound banking practices and protection against conflicts of interest.

If banks are authorized to engage in expanded municipal revenue bond activities, the added competition will benefit state and local government issuers. A broader potential market for revenue bonds may be realized, and the costs associated with their sale may be reduced.

Federal Pre-emption of Due-on-Sale Restrictions

Another issue of fundamental importance to the availability of financial services on a competitive basis centers on state actions preventing enforcement of due-on-sale clauses. Provisions in both S. 1720 and S. 1703 provide a pre-emptive federal rule upholding the enforceability of those clauses in real estate loans. Section 141 of S. 1720 would validate due-on-sale clauses in any loan whenever made by any FHA-approved lender where the loan is secured by a lien on real estate or by a cooperative housing unit or manufactured home. That rule would pre-empt any inconsistent state law unless the state legislature or the state electorate voted within 3 years to override the federal pre-emption. Section 301 of S. 1703 differs in that it would apply only to loans made or held by federally chartered depository institutions and would not authorize states to override the federal pre-emption. Both bills would give rulemaking or interpretive authority to the Federal Home Loan Bank Board, which would be authorized to delegate that authority to the OCC and the National Credit Union Administration.

We firmly support a pre-emptive federal approach to the enforceability of due-on-sale clauses. State law limitations on the enforceability of those clauses have been instituted by statute or judicial decision in 17 states, according to recent studies by the Federal National Mortgage Association. Those courts and legislatures have generally limited the enforceability of the clauses to situations in which the lenders' likelihood of being repaid is demonstrably impaired by the transfer of the property. Except in those situations, they have viewed enforcement of the clauses as unreasonably restraining the ability of property owners to sell their property, since it reduces the sales prices that otherwise would be possible on transactions involving assumable below-market rate mortgages.

This rationale serves to benefit sellers and real estate brokers dealing with homes that carry low interest rate mortgages. Those people benefit, however, only at the expense of lenders and other homeowners, potential home buyers and home builders. Due-on-sale prohibitions also strongly discourage lenders from making new fixed rate mortgages because they cannot reasonably expect a market yield on them over their full lives.

OCC recently published a proposed regulation that would pre-empt state laws limiting the enforceability of due-on-sale clauses in real estate loans made or purchased by national banks. That proposed rule parallels regulations that have already been adopted by the National Credit Union Administration for federal credit unions and by the Federal Home Loan Bank Board for federal savings and loan associations.

The proposed regulation is currently open for public comment, and it would be inappropriate for us to indicate in any way that we have foreclosed further consideration of views that might be expressed on any side of that issue. We do wish, however, to emphasize the federal interest in that subject and particularly to counsel against empowering the states to override the proposed federal pre-emption. Setting ground rules in the marketplace that encourage financial institutions to be active competitors in providing home finance is crucial to meeting the federal objective of ensuring an adequate supply of affordable housing. The existence of a hospitable legal environment is vital to foster the fulfillment of that objective. State laws prohibiting enforcement of due-on-sale clauses constitute a harmful interference both with congressionally granted powers and with congressional policy.

The federal chartering agencies are confident of their authority to address that problem by pre-emptive regulation. Nonetheless, we support congressional action which would dispel any uncertainty as to the effectiveness of federal regulations and could thus prevent unnecessary and costly litigation. However, we oppose enactment of legislation containing provisions for state override of the federal law with respect to federally chartered institutions. We believe that the existing pre-emptive authority would be preferable to a new law that explicitly opened the door to states to bind the actions of federal institutions.

Federal Pre-emption of State Usury Laws

We support the proposal in Title IV of S. 1720 which would amend the Depository Institutions Deregulation and Monetary Control Act by broadly exempting all business, agricultural and consumer loans from state and local usury laws. More specifically, Section 402 of the bill would eliminate the present federal rate ceiling of 5 percent over the Federal Reserve discount rate and remove the existing $1,000 threshold on business and agricultural loans. Section 403 of the bill would pre-empt state usury laws relating to consumer credit for all creditors. No federal rate ceiling would be imposed, but the force and effect of state consumer pro-

tection laws respecting creditor activities in connection with credit transactions would be preserved.

We have strongly endorsed such legislation in previous testimony and correspondence with the committee. We believe that state usury laws not only do not achieve their express or implied social ends but also are economically inefficient and inequitable, are easily circumvented and are inconsistent with the trend toward elimination of deposit rate ceilings. Title IV of S. 1720 addresses those concerns and remedies what we believe to be outmoded and arbitrary attempts to control the price and distribution of credit.

Lending Limitations of National Banks

We support Section 201 of S. 1720, which would increase the 10 percent single borrower ceiling currently imposed by 12 USC 84 to permit a national bank to make unsecured loans in an amount up to 15 percent of its unimpaired capital and surplus, plus an additional 10 percent on loans fully secured by readily marketable collateral. The bill would also simplify or delete existing statutory exceptions where they would be absorbed by the new higher ceiling. In addition, it would authorize the Comptroller to issue regulations further defining terms and to interpret any of the section's provisions.

The 10 percent legal lending limit embodied in 12 USC 84 was originally enacted as part of the National Bank Act of 1864. No specific rationale for the adoption of a 10 percent limit can be found in the committee reports of those years. It appears simply to have been an accepted banking convention of that era. Since 1906, the statute has been amended a number of times, generally by the addition of exceptions designed to increase availability of credit to specific segments of the economy. In many cases, the original exceptions have been subsequently modified. The 14th and latest exception was added in 1972.

Notwithstanding the numerous 20th century modifications, that statute has been outpaced by developments both in banking and in the financial industry generally, with some unforeseen and undoubtedly unintended results.

Most importantly, banks in some parts of the country, particularly smaller banks, are finding their ability to meet local credit needs unduly constrained by the current lending limits. That is especially true of banks in rapidly growing areas and banks serving agricultural customers. For example, a recent American Bankers Association nationwide survey found that 60 percent of 2,400 rural bank respondents had loan applications from acceptable farm customers exceeding their legal lending limit. According to the survey, that situation has prevailed for the last 5 years.

The constraining effects of the current legal lending limit have been worsened by the significant changes that have swept the banking environment in the past several years, specifically inflation and erosion of traditional barriers to competition.

First, because of inflation, credit needs of many individual borrowers increasingly exceed the lending limits of smaller banking institutions.

Second, most national banks are increasingly confronted with competitors not similarly constrained in their lending activities. Those include nonbanks such as the farm credit system, various government programs and private companies that offer financial services. Moreover, even many bank competitors are not restricted to the degree national banks are. Most state-chartered banks have higher limits, and foreign banks generally have much higher limits or are not subject to lending limits at all.

The proposed increase in the legal lending limit would thus alleviate some of the adverse effects that inflation and new competitors have had on smaller banks and their customers. Moreover, we believe that the proposed increase is wholly consistent with sound banking practice.

We also support the bill's proposed simplification of the statute. The numerous piecemeal amendments enacted over the last 75 years have resulted in a lengthy and cumbersome statute. Regulatory interpretations have been necessary to clarify the scope and applicability of the general limit and the many exceptions. The interpretations have added to the difficulties of bankers and, indeed, sometimes of regulators, in determining whether specific credit arrangements are within the limits of the law.

The proposed revision would eliminate archaic and rarely used exceptions to the basic lending limit, retaining only broadly defined exceptions for classes of credit which, by their very nature or collateral, subject the lender to less risk of loss. Very importantly, the bill would also adopt simple, general aggregation standards for determining when extensions of credit must be combined for lending limit computations, thereby eliminating one of the most common difficulties encountered by banks in trying to comply with the law.

In addition to the general increase in the lending limit and the streamlining of the statute contained in the bill, we suggest one amendment. As proposed, the bill would give the Comptroller authority only to define terms to determine when aggregation would be required and to interpret its provisions. We propose that the statute also grant the Comptroller discretionary authority to establish limits for classes or categories of loans or extensions of credit other than those specified in the proposed revision. Such authority would enhance supervisory flexibility to respond quickly and effectively to changing economic conditions and banking practices.

Borrowing Limitations of National Banks

Paralleling S. 1720's easing of national bank lending limitations, the OCC strongly supports the provisions of Section 202, which would revise the limitation on their borrowing authority in 12 USC 82. The current limits would be replaced with a straightforward declaration of the OCC's discretionary authority to set limits on the aggregate amount of national banks' indebtedness, including contingent liabilities, and to regulate specific types of transactions involving indebtedness or liability.

In the nearly 120 years since a limitation on bank borrowing was first incorporated into the National Bank Act, the nature of the banking business has fundamentally changed. In particular, the development of new

forms of bank liabilities in recent years—such as federal funds, repurchase agreements and standby letters of credit—and the emergence of modern liability management have radically changed that side of bank balance sheets. Those developments have had an adverse competitive effect on national banks because several states (including, most notably, New York) have no comparable limitations for state-chartered institutions. Similarly, foreign bank competitors generally do not face comparable restraints, and nonregulated financial service providers are not statutorily prohibited from raising funds in the money market.

While the borrowing authority limitation served a useful supervisory purpose in the past, it has become increasingly difficult to apply consistently and fairly. The proliferation of new liability instruments in recent years and the gradual accumulation of statutory and regulatory exemptions from coverage have left the line between covered and noncovered liabilities increasingly hazy. For example, overnight federal funds are exempt from the limitation, while longer term federal funds are covered. Yet, certificates of deposit, which are almost indistinguishable from term federal funds, from the bank's point of view, are exempt. Borrowings from certain government agencies, such as the Export-Import Bank, are exempt, while others, such as borrowings from the Student Loan Marketing Association, are not. Similarly, the Government National Mortgage Association obligations have been exempted, while pass-throughs of conventional mortgages have not. Rediscounts at the Federal Reserve are exempt, while similar rediscounts at other central banks are covered.

As a result, it has become increasingly difficult to apply the borrowing limitation in a manner that is both consistent with past interpretations and in step with modern banking practice. OCC and bank counsel have been forced to expend considerable effort arguing whether a particular instrument ought or ought not to fall under that statute, when in many instances the distinction is, to a large degree, arbitrary.

Furthermore, those problems will inevitably grow even more complex in the future. As the interest rate ceilings of Regulation Q are removed over the next few years, the line between deposits and money market borrowings currently covered by the borrowing limitation will be erased, and all bank funding sources will become, in effect, purchased liabilities.

Finally, the high and volatile interest rate environment of recent years has impressed upon many banks the importance of reducing their exposure to sharp interest rate swings. They have thus been attempting to reduce the maturity mismatch between assets and liabilities by borrowing in various maturity ranges and markets. That is a cautious and prudent response to increased interest rate risk. However, that attempt to reduce the riskiness of the banking business through diversified funding has been handicapped by the borrowing limitation.

Under the proposed revision of 12 USC 82, bank borrowing would still be a matter for supervisory concern. The OCC would retain discretionary authority to bar those practices it considers unsafe or unsound. In addition, OCC would retain the authority to set aggregate limits on national banks' indebtedness, should they be needed, and to adjust those limits as conditions warrant.

Such supervision by OCC would be complemented by the discipline of the money market, which requires prudent and careful management of liability positions. Banks seeking access to the money markets must be careful not to overextend themselves, lest they be forced to pay a premium for funds or be shut out of the market entirely. For many years, in fact, banks have been operating sophisiticated systems of liquidity management to ensure that funds are always available to meet maturing obligations.

In short, we believe the proposed revision of 12 USC 82 is an overdue and much-needed amendment that would keep the National Bank Act consistent with the realities of today and would provide a more effective and less cumbersome means of maintaining banks' safety and soundness.

Bankers' Acceptances

Section 209 of S. 1720 would increase the aggregate acceptances member banks can have outstanding from 100 up to 300 percent of capital. The aggregate limit could also apply to any combination of domestic or international commercial activities, because Section 209 would eliminate the 50 percent ceiling and document/collateral requirements in 12 USC 372 for acceptances arising from domestic shipments. The bill would exclude from all limits any acceptance guaranteed by a bank or participated to a bank which is subject to the Edge Act.

Section 209 would significantly increase member banks' capacities to create acceptance credit for customers and would dramatically increase their funding flexibility. The nominal statutory authority for aggregate eligible acceptances would be trebled. Furthermore, the proposed elimination of the documentation, collateral and sublimits for acceptances arising from domestic shipments could permit member banks to convert a large portion of their domestic working capital loans into acceptance activities. Finally, the proposed exclusions from the 300 percent ceiling would effectively increase the amount of total acceptances to whatever amount the money markets are willing to absorb.

The OCC supports increasing the amount of acceptances a bank may create to ensure banks have the needed liability flexibility in today's uncertain, volatile interest rate environment.

Raising the ceiling for aggregate eligible acceptance liabilities would be consistent with the legislative history of 12 USC 372. The statute stems primarily from legislation enacted between 1913 and 1917 to facilitate the participation of U.S. banks in the acceptance market and thus promote American trade. Congress placed limits on member banks' acceptance financing because acceptances were relatively unseasoned powers for U.S. banks and there was no established dollar acceptance market at that time in this country.

Bankers' acceptances have proved to be liquid, high quality financial products for banks and their customers. They are not subject to reserve requirements

and are competitive in price with commercial paper and certificates of deposit, being the primary obligation of a bank and also carrying the secondary obligation of the drawer. A highly liquid secondary acceptances market now exists in the United States, as well as a private placement market for acceptances. Those markets provide U.S. banks with competitive pricing and funding flexibilities which can be passed on to the customer in less expensive financing. Furthermore, market realities and the global role of the dollar have changed greatly since 1915. The dollar has been the world's principal reserve and trading currency since World War II, and the volume of dollar trade and demand for dollar acceptance financing has outpaced the growth in bank capital, especially in light of changes in the world's oil trade since 1973.

Given those factors, increased acceptance authority for U.S. banks would increase the international competitiveness of U.S. banks. The present statutory acceptance ceilings force member banks to allocate acceptances to certain customers and to crowd out others. Those that are crowded out either must forego financing, seek acceptance financing at non-U.S. banks, or seek more expensive nonacceptance credit. Expanded acceptance authority for U.S. banks would also enhance the position of the United States as an international trade and financial center. It could also improve U.S. exports and balance of payments. U.S. banks would have greater capacity to provide fixed rate, lower cost financing to U.S. exporters, helping them to compete with foreign exporters who can obtain acceptance credit from non-U.S. banks not bound by comparable limitations.

Despite those arguments for increasing member banks' aggregate acceptance powers, we have reservations about specific provisions of Section 209 and believe they should be studied further before they are adopted. The proposed modifications of acceptance authorities, *i.e.*, elimination of domestic documentation requirements and exclusion from the aggregate limitations, could significantly impact the acceptances market, other money markets and monetary policy. We would urge the committee to consider those ramifications carefully and to consult with the Federal Reserve Board and the Department of the Treasury before taking any action on those provisions of S. 1720.

Real Estate Lending Powers of National Banks

We support Section 203 of S. 1720, which would revise 12 USC 371, the statute regulating national bank real estate lending, by replacing rigid limitations such as loan-to-value ratios and amortization requirements with authority for the OCC to prescribe more flexible and realistic standards.

The restrictions currently in force were intended to put national bank real estate lending on a safe and sound basis and have served that purpose. However, those restrictions have also discouraged national banks from engaging in transactions that could at once be prudent and profitable and also satisfy the needs of their customers. The realities of today's real estate lending marketplace require creative and flexible financing. If national banks are to play an important role in real estate financing in the future—as we hope they will—they must be innovative. We intend, should the proposed amendments to Section 371 become law, to write regulations which would provide national banks with enough flexibility to be strong participants in home financing while ensuring that their lending is done within a safe and sound framework and with appropriate safeguards for consumer interests.

We do not at this time support the suggestion to permit depository institutions to invest in real estate. Commercial banks have traditionally been prohibited from making direct investments in real estate—in the case of national banks, since 1863. The legislative history and judicial interpretations of 12 USC 29 indicate a number of reasons for the restriction. First, investments in real estate tend to be illiquid and highly speculative and thus inappropriate for banks. Second, it was felt that banks should not acquire large amounts of real estate and hold them for extended periods of time. Third, it was feared that extensive bank investments in real estate might compete excessively with other demands for capital. Those purposes were enunciated by the U.S. Supreme Court in *Union National Bank* vs. *Matthews,* 98 USC 624 (1879). In addition, the statute's purpose was to prevent abuse by those banks that might have used their substantial economic power to acquire real estate unfairly from their customers.

We believe that the prohibition of real estate investments by national banks should be retained until Congress has had an opportunity to consider the issue fully in the context of the broader questions involved in the separation of banking from commerce. We also believe that prudential considerations justify imposition of such limitations on all depository institutions, including thrifts.

Transactions Involving Bank Affiliates

We support Section 210 of S. 1720, which would revise Section 23A of the Federal Reserve Act (12 USC 371(c)), dealing with extensions of credit and other transactions between banks and their affiliates. The revision would update that important statute to accommodate the emergence of one-bank and multibank holding companies as a means of facilitating geographical and functional diversification of the banking business.

The bill would take a step toward simplifying the structure of the current law. While a number of complexities would remain, we believe they can be resolved in consultation with agency staffs and should not deter prompt consideration of the section.

We support, with some modification, the revision of Section 23A, which would also give the Federal Reserve Board sole authority to issue regulations or orders to establish limitations or conditions other than those imposed by the statute, to define terms and to exempt transactions or relationships from the statutory rules. Vesting rulemaking authority in a single agency helps to provide certainty as to how the law would apply to all parties of a single transaction, and we are willing to support the choice of the Federal Reserve Board for that purpose. We suggest, however, that the

Federal Reserve Board's authority be limited to formal rulemaking with respect to all of the enumerated items.

Until such time as the supervisory authority for banks and their affiliates is rationalized to reflect the economic realities of current corporate structures in banking, any measure that would unduly increase the complexities of existing authority would be undesirable. A multibank holding company today could easily have three federal banking supervisors, each with primary supervisory authority over portions of the entity's business. Some portions of that business might actually have more than one primary federal supervisor. To introduce multiple sources of rulemaking into that confusing system would permit serious inconsistencies.

Each agency with supervisory authority must, absent rationalization and harmonization of federal supervisory authority, examine and regulate those companies within its jurisdiction, and, to this end, will often have to interpret Section 23A (or regulations that would be promulgated pursuant to it). Thus, to the extent the proposed revision permits the Federal Reserve Board to define terms and create exemptions by order, as opposed to doing so by regulation, it raises the spectre of debilitating delays in OCC's examination process while the Federal Reserve Board is being petitioned to issue such an order. Confining the Federal Reserve Board's authority as we have proposed would help to ameliorate that situation.

Proposed Limitations on Bank Insurance Activities

We do not support the proposal in Section 601 of S. 1720 which would amend the Bank Holding Company Act of 1956 to restrict bank holding companies and their subsidiaries in providing credit-related property and casualty insurance.

Those activities are now permitted under the Federal Reserve Board's regulations, and we believe that their curtailment would be inconsistent with the deregulatory thrust of S. 1720 as a whole. While the bill generally provides for enhanced competition among providers of financial services, Section 601 is essentially anticompetitive, imposing artificial product segmentation on industries whose products and markets are becoming increasingly homogeneous. As the former Comptroller testified before this committee last year, the availability of credit-related insurance services from bank holding companies and their subsidiaries provides a service to the public and increases competition in the insurance field. Logic dictates that in a freely competitive market, that competition would result in consumer savings.

Critics of bank holding companies' insurance activities have alleged that such activities carry the potential for abusive tying of the sale of insurance to the granting of credit. We believe that concern is fundamentally valid, but Congress has already acted effectively to minimize such potential abuses. Under the Bank Holding Company Act amendments of 1970, tying arrangements by banks are subjected to a much more rigorous standard of culpability than are tying arrangements by nonbank lenders who compete with banks in providing both credit and insurance. If additional safeguards are desired, we think it would be preferable to require adequate disclosure of credit insurance costs and to prohibit coercive practices on the part of all consumer lenders, rather than preventing the offering of that service by one segment of the financial industry.

Furthermore, to the extent that real or potential problems exist regarding credit-related insurance, regulatory remedies short of statutory prohibitions are available. Bank holding companies are effectively regulated by the Federal Reserve Board. We believe it is preferable to control such bank holding company activities through regulation than through statute, as regulations provide flexibility to respond to the expansion of bank holding companies into services necessary for their continuing viability as competitors.

Section 601 would also arbitrarily discriminate among certain sizes of institutions. The bill would permit expanded insurance activities for bank holding companies with $50 million or less in assets, yet prohibit such activities by larger institutions. We know of no rationale for discriminating among holding companies on the basis of size alone. The proposed exclusion of larger bank holding companies and their subsidiaries would arbitrarily eliminate a significant segment of competition from the marketplace, denying the public the benefits of further competition.

The competitiveness of banks and other lenders in the insurance market contributes to downward pressures on prices and services, resulting in improved benefits for consumers. The convenience afforded by one-stop shopping and combined billing for a loan and related insurance is currently available at the offices of nonbank competitors and should also be available at the offices of banks that wish to offer it. We believe it would be inconsistent and backward-looking for Congress to enact legislation which rationalizes the product lines that may be offered by financial intermediaries and allows various types of institutions to compete more freely, while at the same time adopting a provision which arbitrarily diminishes competition for one type of credit-related services. We urge the committee to reject the type of protectionism embodied in the proposed Section 601.

Amendments to Truth in Lending

S. 1720 contains a number of proposed amendments to the Truth-in-Lending Act.

We support the bill's provisions which would override state laws that require credit disclosures inconsistent with the act. Those inconsistencies have been a significant source of cost and confusion to creditors and have also been confusing to borrowers. We are concerned, furthermore, that the confusion and the length of disclosure forms may be exacerbated by implementation, under last year's simplifying amendments to the act, of the requirement that federal disclosures be conspicuously segregated from all others. We believe that the provisions of the act are fully adequate to give credit customers the information needed to make informed borrowing decisions and should preempt state laws.

We do not support the bill's proposal in Section 703 to delete "arrangers of credit" from the definition of

creditors that must provide disclosures to borrowers. The Truth-in-Lending Simplification and Reform Act of 1980 (Simplification Act) defined "creditor" to include (1) a person to whom an obligation is initially made payable and (2) an arranger of credit. An "arranger of credit" is a person who regularly arranges for extension of consumer credit by another person if the latter is not normally engaged in the business of extending credit.

The bill's deletion of arrangers of credit from the definition of creditor would primarily affect consumers who obtain loans from home sellers through real estate broker financing arrangements and real estate brokers who handle such transactions.

Those kinds of seller financing arrangements have become increasingly common in the real estate market as high interest rates and increased property values foster innovative financing plans which avoid or supplement traditional credit sources. Many home sellers, with a broker's assistance, are taking back short-term second trusts to enable prospective buyers to make a larger downpayment and obtain a smaller bank loan with smaller monthly payments from an established creditor.

Home sellers in such transactions are not themselves covered by the Truth-in-Lending Act because they do not regularly extend consumer credit. Under the Simplification Act, however, brokers who regularly arrange for prospective buyer financing with home sellers are covered and must make the Truth-in-Lending Act creditor disclosures beginning on April 1, 1982.

If those brokers are exempted from the Simplification Act's definition of "creditor," no one would be required to furnish disclosure statements to buyers who take out such "secondary" financing. We know of no persuasive reason for excluding that substantial population of borrowers from access to truth-in-lending information. Home buyers who must depend on brokers and other arrangers of credit for obtaining credit can benefit as much as any other borrower from truth-in-lending disclosures. It may be argued, in fact, that the disclosure is more valuable in such creative financing transactions because such transactions are likely to be less standardized, less familiar, more complex and more error-prone than transactions with an established creditor.

The bill also includes a provision in Section 705 that is intended to reduce the incidence of frivolous or "nuisance" suits under the Truth-in-Lending Act and to give courts greater discretion in determining the amounts of statutory damages to award in individual actions under the law. Currently, an individual consumer may be awarded statutory damages at twice the amount of the finance charge, but not less than $100 and not more than $1,000. Section 705(a)(2) would delete the $100 damage floor and would increase the ceiling to not more than $5,000. It would also prohibit courts from awarding statutory damages unless the court finds that the creditor's actions reflect substantial noncompliance with the requirements of the law. Finally, in determining such liability, the court would have to consider such factors as the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected and the extent to which the violation was intentional.

We have traditionally supported efforts to amend the Truth-in-Lending Act to reduce its use as a vehicle for costly and frivolous litigation. At the same time, we believe it is important to preserve the opportunity for individuals to seek statutory damages for violations. The Simplification Act contained several amendments that sought to achieve an appropriate balance between reducing unwarranted costs to creditors and the legal system and maintaining individual rights. Those amendments have not yet had an opportunity to be reflected in court dockets and should perhaps be given more time before additional limitations are placed on statutory damages.

Nevertheless, we recognize that the minimum damage provision and its lack of criteria to guide courts in awarding individual statutory damages are often cited as the major incentives to litigation. If those hearings bear out such claims, we would not object to the enactment of the proposed changes. If the proposal is adopted, however, we would suggest that it be amended to clarify that the individual would not bear a burden of proof to show that the creditor had engaged in the violation in question on transactions other than his or her own.

Expanded Eligibility for NOW Accounts

Those hearings also address S. 1686, which Senator Lugar has introduced to permit federal, state and political subdivisions to establish NOW accounts at depository institutions. The bill would also exempt demand deposits of federal, state and political subdivisions from the reserve requirements of the Federal Reserve System and would enable state and local governments to earn a market rate of return on their deposits. The latter two provisions are intended to provide state and local governments with access to investment opportunities comparable to those available to the U.S. Treasury Department for investment of its tax and loan accounts.

We support removal of the eligibility requirements which currently limit access to NOW accounts to individuals and nonprofit corporations. Small governmental units, as well as small businesses, often find it difficult, inconvenient or impossible to take advantage of existing techniques for earning interest on their transactions balances. Removing restrictions on NOW account eligibility would give them an opportunity to earn interest on a basis more comparable to that of large organizations. The latter can already earn interest on transaction balances, often at market rates, by purchasing negotiable large denomination certificates of deposit, entering into securities repurchase agreements or negotiating low cost prices on other banking and financial services they use.

We do not, however, support the bill's provision to exempt federal, state and municipal demand deposits from reserve requirements. We cannot envision any reason that governmental demand deposits should be

treated differently from other demand deposits with regard to reserve requirements. Furthermore, such differential treatment could complicate the efforts of the Federal Reserve to achieve monetary policy goals.

We also have concerns about the workability of the bill's proposal to expand the Treasury Department's relatively complicated tax and loan account investment mechanism to include state and local governments. We believe the goal of permitting governmental units to earn market rates on their deposits could be accomplished in a simpler and more straightforward way by authorizing depository institutions to offer market yielding short-term deposit instruments. The Depository Institutions Deregulation Committee recently requested comments on several deposit instruments and intends to take up the question of authorizing such instruments at its mid-December meeting. Such an instrument could be made available to state and local governments and would have the benefit of permitting all depositors to earn a market rate of return, while enabling depository institutions to offer deposit instruments which are competitive with nondepository instruments.

Increased Deposit Insurance of Retirement Accounts

We are opposed to Section 707 of S. 1720, which would increase federal deposit insurance on individual retirement accounts/Keogh accounts from $100,000 to $250,000. Although increased deposit insurance would provide a marketing advantage to depository institutions that is not available to other providers of pension plans, such a major increase in deposit insurance coverage raises the issue of the extent to which any depositor should be fully insured against all risk, particularly on accounts which soon may pay market rates of interest. Because large account depositors are generally sophisiticated in protecting their own investments, we do not believe expanded insurance coverage is essential.

International Banking Facilities and Deposit Insurance in U.S. Trust Territories

Section 702 of S. 1720 would amend 12 USC 813(1) to exempt deposits held in international banking facilities from FDIC insurance coverage and assessment. Under the existing statute, the facilities, because they are within the territorial United States and are a creation of an insured bank, can be assessed and ostensibly insured. As a practical matter, the $100,000 minimum deposit required for facilities actually limits the insurance exposure, except under Section 13(c) (direct assistance) and Section 13(e) (purchase and assumption) transactions.

We support the proposed exemption. The initial concept of the facilities to permit U.S. depository institutions to compete effectively with foreign institutions and to provide a U.S.-based alternative to conducting business in offshore centers. The international banking facility regulation published by the Federal Reserve limits deposits to foreign banks, foreign offices of U.S. banks and other foreign nonbank customers outside the United States. The regulation also requires a minimum deposit of $100,000. Because much of the activity in the facilities is wholesale international interbank activity where profit spreads are quite small, failure to exempt those activities from the insurance assessment requirement could have an inhibiting effect on the establishment of those facilities and, indeed, tend to defeat the original intent of the international banking facility proposal.

We also support Section 120(d) of S. 1721, which would clarify that territories and possessions of the United States include trust territories. That is a clarification of the existing statute and is viewed as a technical amendment which would make the FDIC act consistent with statutes of the FSLIC and the National Credit Union Administration.

Small Bank Exemption From Reserve Requirements

Section 211 of S. 1720, would exempt small depository institutions holding $5 million or less in deposits from the reserve requirements imposed by the Depository Institutions Deregulation and Monetary Control Act of 1980 on nonmember depository institutions. The section would also provide a mechanism for automatically raising that exemption annually by 80 percent of the percentage increase in the total deposits of all depository institutions. We support such an exemption on the grounds that it would minimize the regulatory burden on many small depository institutions, with no appreciable impact on the Federal Reserve's monetary operations. We believe, however, that the annual adjustment should be equal to 100 percent of the growth in deposits to avoid bringing additional smaller depository institutions under reserve requirements in the future.

The Federal Reserve has deferred implementing reserve requirements for nonmember depository institutions with total deposits of less than $2 million until November 1981. The deferral has affected nearly 18,000 institutions, including about 17,000 credit unions. Those institutions hold only approximately ½ to 1 percent of all deposits. Section 211 would add approximately 2,500 institutions, which hold less than ⅕ of 1 percent of all deposits, to those currently exempted by the Federal Reserve's administrative action and would make the exemption for all such institutions permanent.

OCC Civil Money Penalty Authority

We support Sections 204 and 227(a) of S. 1720 which would clarify the existing authority of the Comptroller's Office to levy civil money penalties for violations of the banking laws.

Section 204 would grant explicit authority to bring civil money penalty actions for violations of the statute governing trust activities (12 USC 92(a)). The current language of Section 92(a) contains a criminal penalty provision applicable to any violation of the statute, regardless of intent. Use of civil money penalty authority in lieu of the criminal sanction would reduce unnecessary burdens on the criminal justice system by enhancing regulatory flexibility to correct violations involving simple negligence. Willful embezzlement of trust funds by a bank officer would, of course, remain

subject to criminal penalties under other laws. That approach would be consistent with recommendations made by the Administrative Conference of the United States that criminal sanctions be replaced by civil money penalty actions, where appropriate. (See 1 CFR 305.72-6, reaffirmed in 1979 at 1 CFR 305.79-3.)

Section 227(a) would make a technical amendment to clarify that the existing civil money penalty authority of the Comptroller's Office codified at 12 USC 93(b) applies to those provisions of the banking laws covered by 12 USC 93(a). We support that clarification, as recent legal commentary has raised the question of whether the statutory provision granting the Office money penalty authority is deficient. The expressly enunciated congressional purpose of the law was to extend such authority to violations of the National Bank Act. However, terminology used by the 1978 statute revising Section 93 has resulted in some confusion over the scope of the Comptroller's civil money penalty authority. Technical correction of the statute would forestall fruitless litigation on this point.

FIRA Technical Amendments

We support Sections 221 through 233 and Section 709 of S. 1720, which would incorporate technical amendments to the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA), Public Law 95-630 (November 10, 1978). Those amendments, proposed by the Federal Financial Institutions Examination Council and its component agencies, would correct procedural problems which the agencies have encountered in implementing and administering FIRA. Two sections of the proposed bill are noteworthy.

Section 221 would eliminate arbitrary dollar limitations imposed by Section 22(g) of the Federal Reserve Act on a member bank's loans to its executive officers for the purchase of a home or the education of children. The current statutory limitations of $60,000 for real estate loans and $20,000 for educational loans are unrealistic under present circumstances. They are also unnecessary in light of other FIRA prohibitions regarding preferential lending to bank insiders, including executive officers. We therefore support the bill's provision to eliminate those ceilings, while retaining the present $10,000 ceiling on other types of loans.

We also support Section 223, which would amend Section 22(g) by deleting Paragraph (9), which currently requires that each member bank file a quarterly report on all loans made by the bank to its executive officers. That requirement largely duplicates the new reporting provisions of FIRA in 12 USC 1817(k)(1). It was designed to facilitate the enforcement of the loan ceiling restrictions regarding bank executive officers. However, the law also requires all insured banks to provide annual reports containing a list of all the bank's executive officers and principal shareholders and the aggregate amount of all extensions of credit by the bank to them and their related interests. We therefore support the elimination of Paragraph (9).

We also support Sections 222 and 224, which would amend the civil money penalty authority of the federal financial institutions supervisory agencies to clarify that the exercise of civil money penalty authority is within the discretion of the agency and to confirm the authority of each agency to compromise, remit or modify any such penalty (authority already expressly granted the OCC by Section 103 of FIRA, which added 12 USC 93(b)(6)).

We also support Section 225, which would amend Section 22(h)(2) of the Federal Reserve Act to simplify the extremely cumbersome procedure required under FIRA for prior approval by a majority of an institution's board of directors for loans aggregating $25,000 or more to a bank's insiders or their related interests. The proposed amendment would require prior approval by the bank's board of directors and would enable the board to delegate the authority to make such loans to a loan or executive committee composed of members of the board. The Federal Reserve Board has adequate rulemaking authority to impose specific regulatory restrictions with regard to such delegations of authority, and the financial supervisory agencies have authority to impose further restrictions on a case-by-case basis when necessary.

We support Section 230 which would give the respective agencies express authority to remove a management official of a federally chartered or federally insured depository institution for a violation of the Depository Institution Management Interlocks Act. Although the act clearly contemplates the use of removal proceedings for violations of the act, the existing statutory mechanism for removal proceedings requires elements of proof not relevant to the competitive considerations of the act. For example, a necessary element in a removal proceeding under 12 USC 1818(e)(1) is that the violation of law is one involving personal dishonesty or demonstrating a "willful disregard" for the safety or soundness of the institution. While such criteria are relevant to other removal proceedings and would be retained for them, the proposed amendment recognizes that the nature of an interlocks violation justifies removal of the management official without inquiry into such matters.

Several of the proposed amendments to FIRA are merely definitional and typographical; others accomplish procedural changes clearly contemplated by the statute but which are technically deficient or ambiguous under the law. We support those refining amendments.

Federally Chartered Bankers' Banks

We support Section 205 of S. 1720 which would clarify the authority of the Office to charter and permit national bank investment in federally chartered "bankers' banks," institutions owned exclusively by depository institutions and authorized solely to provide banking services to such institutions. They provide a method for independent institutions to enter into joint ventures to achieve economies of scale in activities too costly to undertake on an individual basis. Such services, which were often previously provided by large urban or regional correspondent banks, include electronic data processing, check clearing, various investment functions, executive search services and the like.

In 1975, the first *de novo* bankers' bank was chartered as the "Independent State Bank of Minnesota." Interest in the idea flagged somewhat until the Depository Institutions Deregulation and Monetary Control Act of 1980 enabled national banks to make limited investments in such entities. There are currently four or five additional bankers' banks chartered or being organized in Texas, Colorado, Wisconsin and Ohio. Other states are also studying the concept for possible revision of their banking laws to permit state chartering of such entities.

Section 205(a) and (b) would specifically authorize the Comptroller's Office to charter national banks to operate as bankers' banks and would authorize national banks to make limited investments in such entities. Providing for federal chartering of bankers' banks is desirable for several reasons. First, it would facilitate the formation of such banks on a nationwide basis. Second, it would give greater flexibility to bankers located in several states to organize a banker's bank to provide for their wholesale banking needs. Third, federal chartering would enhance competition in the marketplace by providing small, independent depository institutions with an additional mechanism for fulfilling their wholesale and regional banking needs. Fourth, federal chartering would minimize duplication of regulatory effort in instances in which the bankers' bank is owned exclusively or primarily by national banks. Fifth, it would provide greater uniformity in supervision and regulation of such entities.

We suggest that language be added to Section 205(a) granting the Comptroller express authority to fashion appropriate rules and regulations for the chartering and operation of bankers' banks, similar to that accorded by the International Banking Act of 1978 for federal branches and agencies. Existing statutory restrictions appropriate to full-service commercial banks may prove incompatible with the operation of those institutions which provide services solely to other depository institutions. Regulatory flexibility, therefore, will be important.

Amendments to the Bank Merger Act

Section 131 of S. 1721 would change substantially the scope of the existing Bank Merger Act. The stated purpose of that amendment is to expand the act's coverage to encompass mergers of insured banks with savings and loan institutions. We generally support that proposal as consistent with the OCC's longstanding policy of encouraging geographic and product expansion and appropriate restructuring in the financial services industry. However, by subjecting mergers of insured banks with "any noninsured financial institution or other institution" to the act's requirements, the effect of the amendment is much broader than apparently intended. The term "financial institution" is not defined in the statute as amended. We therefore recommend that the full ramifications of that proposal be carefully explored by Congress.

Paragraph 13 would exempt certain corporate reorganizations and bank holding company acquisitions from many of the requirements of the Bank Merger Act. That change would complete the process of deregulation of phantom bank transactions commenced by the OCC's new procedures, and we strongly endorse it.

Paragraph 28 deletes the required report to Congress for decisions under the Bank Merger Act. The present requirement is unnecessarily wasteful and burdensome, resulting in individually crafted opinions for each merger, no matter how trivial. In light of OCC's policy of writing opinions only in cases of substantial interest, we support that provision.

Other paragraphs remove the competitive factor report requirements, leaving the Department of Justice as the only agency from which the deciding authority seeks a competitive factor report. Since the agencies tend to agree on more than 80 percent of proposed mergers and since the preparation of the competitive factor reports is unduly burdensome, we support that provision. Nothing in the proposed law would prevent the agencies from submitting comment letters to each other in cases they deem to be of sufficient interest.

If the amendments contemplated by that section are enacted, we suggest, in addition, that the existing mechanism for review of an acquisition of the liabilities of a noninsured institution by an insured institution be changed to afford the supervisory agency responsible for the resulting institution an opportunity to scrutinize the transaction. For example, we may find outselves faced with the anomalous situation of having no opportunity to review the merger of a major savings and loan institution with a national bank. Rather, the FDIC, in its capacity as insurer of the resulting institution's depository accounts, would review the transaction. The OCC as primary supervisor would be unable to forestall or place conditions on the addition of problem assets and liabilities to one of its own institutions. That same concern is adequately handled in the granting of new charters through consideration of the standards found in the Federal Deposit Insurance Act. The committee may wish to consider an amendment that would give the primary supervisory agency input into that process.

Final Disposition of OCC Unclaimed Property

We support, with minor amendments, Section 208 of S. 1720, which would provide a specific legal basis for OCC to terminate its role as successor to the receivers of national banks which failed before and during the early years of the Great Depression. For nearly 50 years, the Office has been responsible for storing certain articles recovered from national banks closed before 1936. The proposed legislation would clarify the authority of the Office to make final disposition of those articles, following publication of a notice to last known owners and their heirs, providing a final opportunity for those items to be claimed.

The inventory is largely comprised of unclaimed items recovered from vaults and safe deposit boxes of closed national banks. It includes a substantial volume of paper such as old wills, deeds and stock certificates, a small quantity of silver and gold objects, including flatware and pocket watches, some diaries and various other personal effects.

Prior to the FDIC's complete assumption of responsi

bility for all insured bank liquidations in 1936, the Office handled the liquidation of insolvent national banks. When a national bank failed, the Office appointed a receiver to settle the bank's affairs and liquidate all remaining assets. The first such receiver was appointed on April 14, 1865, to liquidate the First National Bank of Attica, New York. That practice continued through the early months of 1936 when the FDIC was able to assume its role as liquidator for all insured banks. Federal law now requires that the Comptroller appoint the FDIC as receiver for all closed national banks.

Some individual receivers earlier appointed by the Comptroller were unable to return all of the money and various property held in safekeeping by the closed banks to its owners. Although there is little existing documentation regarding the conduct of those receiverships, the substantial personal and economic dislocation of the early 1930's undoubtedly contributed to the inability of some receivers to make a complete distribution. For whatever reason, the termination of those receiverships resulted in undistributed funds and property being turned over to the Office.

Such unclaimed articles were stored in a basement vault in the Main Treasury Building. In early 1980, they had to be moved and were stored temporarily at the Bureau of Engraving and Printing. In June 1980, the Office and the Smithsonian Institution entered into an agreement allowing the Smithsonian's Museum of American History to take temporary custody of the inventory to review the items for possible addition to the national collection. The items were moved into a secure area in the museum and currently are being examined by the museum's historical experts.

Early this year, the General Accounting Office began a review of the safekeeping of the unclaimed property held by the Comptroller. The purpose was to formulate possible options for the final disposition of the property.

Although, in our opinion, we have authority to dispose of that property under existing federal law, the Comptroller's Office and the General Accounting Office staff met several times and concluded that legislation should be sought to clarify the Office's authority. S. 1720 reflects the General Accounting Office proposal. Under its provisions, the Office would be required to publish notice of the existence of the various unclaimed items to give owners or their heirs, perhaps unaware that the property exists, a final opportunity to obtain possession. Upon receiving convincing proof of a valid claim and after the expiration of the time for the submission of claims, the Office would deliver the specifically claimed items to established owners. If after 12 months there remained any items for which no claim had been filed, they would become property of the United States. The Office would be given authority to sell such remaining property or to dispose of it in any other fashion. The proceeds of any sale, less the expenses incurred by the Office in distribution of the items and in the processing of claims, would be transferred to the Treasury as miscellaneous receipts.

S. 1720 provides that the Comptroller's Office, its agents and employees would not be subject to any personal or legal liability for disposition of any property. The Comptroller would, however, have authority to make a reasonable distribution or delivery of any item based upon the apparent validity of the claims which are filed. Such informal decisions would be based on the adequacy of information and documentation made available to the Office. If we believed that a claimant had presented convincing evidence of entitlement to the property, we could deliver the property to the claimant. No formal or written decision as to legal ownership would be made by the Comptroller. Other claimants to the same property would be required to seek legal resolution of their claims in a court of competent jurisdiction.

The Comptroller would have no responsibility or legal liability in connection with legal disputes between competing claimants. Such disputes could be better settled by the courts which are more familiar with the provisions of applicable laws. For example, if two persons submitted timely claims to the same property within the 12-month notice period, the Comptroller could consider the proof of ownership presented by both parties before determining which party, if either, was entitled to the property. That decision would end our role in determining the rightful owner. If a dispute continued between the two claimants, it would be settled in court, with the Comptroller having no further role in the matter.

The proposed legislation would simply provide the apparent owners of the undistributed items, or their heirs, a final opportunity to recover them. Although it would be impossible for the Office to estimate the monetary worth of many of the articles, we feel that if the proposed law is enacted, one final effort could be made to return items such as diaries, old clothes and silverware to their rightful owners.

We also suggest, however, that specific congressional authorization be incorporated into the law for us to donate any property of historical significance which remains unclaimed to the Smithsonian Institution for addition to the national collection. Many items which have little or no intrinsic value may have educational or historical significance which should be preserved. Such donations would contribute to public understanding and appreciation of a unique period in American history.

Special Venue Provisions Affecting National Banks

Section 206 of S. 1720 would repeal the special venue provisions of 12 USC 94 as it relates to operating national banks and provide that suits against a national bank receiver may be brought only in the district in which the bank had its principal place of business.

The original purpose of Section 94 was to prevent inconvenience and interruptions to the business of national banks which might result from records and books being sent to distant counties. The rationale was that records and personnel are centrally located and readily available in the jurisdiction in which the bank is established. The introduction and development of branch banking, however, has contributed to the decentralization of bank records. Even in those banks which keep all records at their main offices, the development of modern methods of duplication, transporta-

tion and communication has reduced the possibility of substantial interruption of a bank's business as a result of suits brought in various parts of the country.

Moreover, burdens imposed by Section 94 have been recognized. A plaintiff must often file suit for a claim against a national bank away from his or her residence or the place where the claim arose. Plaintiffs may be unable to sue all defendants in one judicial district if one (or more) national bank is among several defendants in a suit. Furthermore, venue may not be changed in an action against a national bank under 28 USC 1404(a) because venue may only be changed to the forum in which the suit may be originally brought.

Judicial antagonism toward the restrictive provisions of Section 94 has led to efforts to avoid its effects by holding that certain actions are local rather than transitory and, in other instances, by implying that national banks effectively waive the privilege by their conduct of extensive operations outside the bank's charter district. (*Reves* v. *Bank of America*, 352 F. Supp. 745 (S.D. Cal. 1973)). However, despite the courts' recognition of the burdens of Section 94, they continue to recognize that Congress must remedy the inequity of the law through amendment or repeal of the statute.

Section 206 would repeal the special venue provision for operating national banks. The general thrust of current law would be retained, however, for suits brought against closed national banks. Courts have interpreted Section 94 to include national bank receivers. Section 206 would codify those decisions. The premise that records and personnel are centrally located and readily available in the jurisdiction in which the bank is established is also true for actions and proceedings against a bank's receiver. The receiver is charged with the complex task of winding up the bank's affairs in an orderly fashion and will not be engaging in the general business of banking. Generally, a receiver will be working out of the bank's main office. If forced to defend actions at various locations throughout the country, the receiver's task would become further complicated. Venue based on the bank's charter district would contribute to an orderly and effective liquidation process.

Submission of Call Reports to the FDIC

We believe that Section 120(c) of S. 1721, which would provide that reports of condition, *i.e.*, call reports, be submitted by all financial institutions to the FDIC, is unnecessary. That change is proposed as part of the bill's consolidation of the federal deposit insurance agencies and would give the FDIC authority over both the content and timing of those reports. The other federal financial institution regulators would be granted residual authority to collect such additional reports as they deemed appropriate.

Currently, bank call reports are collected by the appropriate federal regulator, each under its own authority. For national banks, the FDIC acts as the Office's processing agent for those data. Copies are made available to the FDIC; the timing of the reports is fixed by interagency agreement to coincide with each calendar quarter end, and uniform content is coordinated in accordance with Section 1006(c) of Title X of FIRA under the auspices of the Federal Financial Institutions Examination Council. Under existing statutes, the National Credit Union Administration and the Federal Home Loan Bank Board are also subject to the council's mandate respecting uniform reporting systems but are not obligated to provide call report data on credit unions and savings and loan associations to the FDIC.

Most of the changes specified in the bill are technical adjustments intended to provide the FDIC with direct authority to collect data from all financial institutions including credit unions and savings and loan associations. However, the proposed language would go much further and grant primary authority with respect to all call report matters to the FDIC.

That provision could contribute substantially to the reporting burden and confusion if the other agencies, the Federal Reserve Board, OCC, Federal Home Loan Bank Board and the National Credit Union Administration, found it necessary to exercise their residual reporting authority to collect additional call report or other financial data. Those agencies have specialized needs for data which could be inconsistent, or even incompatible, with the reporting standards established independently by the FDIC. The result could be duplicative or parallel but inconsistent reporting requirements and a substantial increase in burden for respondents.

We strongly oppose the amendments proposed in Section 120(c). Each federal financial regulatory agency should retain its own authority to collect call report type data and should continue to be required to conform that data to uniform standards under the auspices of the Federal Financial Institutions Examination Council.

Other Issues

Finally, we wish to state our support for three other areas covered by revisions proposed in S. 1720 and S. 1721.

First, we support Sections 510-516 of Title V of S. 1720, which would amend the Federal Credit Union Act to remove the 30-year maturity limit and sales price restriction on first mortgage loans made by federal credit unions and would expand or clarify other provisions of the act to facilitate credit unions in making second mortgage loans and in selling mortgages they originate into the secondary market.

Second, we support Section 120(m) of S. 1721, which would repeal 12 USC 1817(b). That statute currently provides for the FDIC to ask a court for forfeiture of a bank charter if a bank fails to make required reports or pay required assessments. We support that repeal because the Office has elsewhere the authority to remove national charters and to remedy the negligent acts addressed in 12 USC 1817(b) by other means. It has never been necessary for the FDIC to use the existing provisions of 12 USC 1817(b). In the interests of deregulation and streamlining existing statutes, the Office views the repeal of 12 USC 1817(b) as desirable.

Third, we support Section 120(i)(5) of S. 1721 which would permit the FDIC to deduct lending costs before

computing the assessment credit for insured banks. The intent of that provision is to recover the short fall in interest income when the FDIC provides a loan to an insured bank bearing an interest rate that is less than the FDIC's average annual rate of return on its portfolio of investments.

Mr. Chairman we said at the outset that, despite the difficulties facing segments of the financial industry, these are exciting times. We are on the threshold of an era of greatly enhanced competition in financial services which will lead, we believe, to stronger financial institutions and more variety, quality and competitive pricing of financial products for the public. Echoing the river metaphor that opened this statement, I would like to conclude with a quotation from Shakespeare's "Julius Caesar" that aptly describes the challenge before us:

> There is a tide in the affairs of men
> Which, taken at the flood, leads on to fortune;
> Omitted, all the voyage of their life
> Is bound in shallows and in miseries.
> On such a full sea are we now afloat;
> And we must take the current when it serves
> Or lose our ventures.

Remarks of Dean E. Miller, Deputy Comptroller for Specialized Examinations, before the National Trust Conference, Honolulu, Hawaii, February 17, 1981

We hear talk from time to time that the community bank should not be in the trust business—that those presently having trust departments should get rid of them and that those without departments should not harbor thoughts of establishing them. We have even heard it alleged that this is the policy—albeit perhaps only informally so—of the OCC. I take issue with each of those propositions.

I would begin by recognizing that some community banks, perhaps, should not be in the trust business—certainly in the manner they are presently conducting it. Indeed, you could call it a misnomer for one even to imply that the operation of a trust department in some banks is a business—for the principles being followed are anything but businesslike. And, yet, I think that should be the key prerequisite for community banks, indeed, any bank—offering trust services—they should do so on a businesslike basis. Otherwise, the product quality will inevitably suffer, I am convinced, and the community will receive at best a questionable benefit.

It is not businesslike, for example, to accept an account without knowing whether it will generate a profit or loss, or even roughly how much profit or loss. Neither is it good business to operate a department of your institution as a permanent drain on its profits. I know that you will say that loss leaders are common in business, often quite necessary to attract or keep other high-profit business which improves the bottom line, and I can't argue with that. What I would argue with is the proposition that businesses which employ loss leaders on a continuing, rather than a one-shot, basis do so with their high cost products and represent to their customers that the loss leader products are of the highest quality, top of the line, if you will. Yet, a bank's trust department is a professional fiduciary operation. By being in the business, a bank is deemed to be having special skill and expertise, which is a top-of-the-line product. That is not the stuff of which loss leaders should be made. You do not expect to find a store's best products in its bargain basement, and the store does not try to lead you to believe those items are the best. Here is where, I believe, that loss-leader justification for the unprofitable trust department breaks down most. You do not—cannot—say to customers, "Yes, we can take your will, but we won't assign one of our best officers on a full-time basis to administer it when you die." Yet, all too often that's how the loss-leader trust department turns out, just by the very nature of it being a loss leader. The community is not served by that.

Is there any other business-acceptable justification for operating a trust department at a loss? How about as a service to the community? I believe that that concept is valid only to the extent that it is consistent with a profitable operation, for banks are not charitable institutions, as we all know so well. There is no business justification for operating a high-cost service operation involving a significant amount of your best resources just as a service to your community. And, as I have said, if you conduct your trust department on a basis less exacting than that, then you really aren't doing your community any service at all. So that is not a justification for a money-losing trust department.

That takes me to my central theme: community banks should not be in the business of running a trust department if they are not going to deliver a high-quality, top-of-the-line, product on a profit-making basis. I fully believe it is possible for a community bank to do that—many are doing so—and I believe that every community bank that wishes to make that commitment should do so. Based on observations from my vantage point over the past 20 years, I have formed some definite conclusions as to how to do that, and how not to. Here are some of them. Let me say first that these principles are very basic, and I'm sure they're not new to you. I express them in this context to emphasize that all too often they are not followed in the small bank trust department and are the cause of their problems.

You must pay trust department personnel, both the department head and the supporting personnel, the

same as those of your most-favored lending operation. The concomitant of that is that those people must be deserving of such pay. If you have obtained the best possible persons for the trust department complement and assigned your best recruits to it as well, they will be deserving, at least in terms of quality of work being done for the bank. The trust department cannot be your turkey farm, in other words.

Next, you must have a sufficient number of officers and employees. It is just as inefficient—just as wasteful, just as unbusinesslike—to have a person with an impossible workload as it is to have too many people. The inevitable result is a shoddy product, which is the basis for much of American business' problems vis-a-vis foreign competition today. And assuming you have, as I suggested, assigned talented people to the trust department, it is a tragic waste of that most valuable resource to have them being so buried in work that their superior qualities are smothered.

Making a trust department profitable is an exercise in elementary business principles. You must first learn the cost of each of the products which you offer. From that, it is an easy matter to learn the price you must charge for a profit. Then you must decide to establish that price or not to offer the product. It is that simple, really. If fees are fixed by law or legal authority, get them changed or do not offer the product. Nothing in the American system requires you to offer an unprofitable product. As I said before, banks are not charitable institutions.

I think at this point I can feel some vibes from out there. Some of you are saying to yourselves, "You're a fine one to be speaking about profits. You have this package of proposed regulations out that will increase our costs substantially, and you have raised examination fees as well." Let me respond to those now.

First, let's take a look at the proposed regulations. The volume is deceiving. Quite a bit of the material concerns minor items, housekeeping matters and even some liberalizations. Two proposals would impact trust department costs significantly, however: the ones dealing with disclosure of soft-dollar practices and uninvested cash. Neither proposal will ever be made final in the form proposed. The most I personally can see them coming to is some form of policy requirement that certain principles be followed in their handling. I may be wrong, but that's my evaluation. If nothing else, your comments have ensured that result, I think.

But that doesn't say that those subjects will go away and that you can stop thinking about them. If anything, they reflect the change in climate which has occurred in banking. How so? Take the matter of uninvested cash. You all know how much more difficult and time consuming running a bank has become in this day of high inflation and volatile interest rates. Depositors are taking their money where the greatest return is, and banks' matching of assets with liabilities has become very critical. The same factors are affecting your trust department. Beneficiaries are being squeezed by inflation just like depositors. And like depositors, they are becoming quite aware of the various short-term investment instruments and their rates of return. In addition, they are starting to inquire about the use of their money by the banks. And that is what both of those proposals deal with. They reflect concerns with which a bank, especially a community bank, must deal.

It may be that it's no longer sufficient to, in effect, tell the public:

> Our fees are low because we also benefit from the balances of cash awaiting investment or distribution which your accounts will generate, and it will all even out over the long run. You're getting this bargain fee as a part of your return.

I think that rationale leaves something to be desired. Methods of measuring that are not precise, inevitably involving a number of arbitrary assumptions. And they are particularly difficult to calculate with respect to specific accounts, which is why most people don't try, I suppose. The practice may not even be good business because it may not be evening out—the income those balances are generating for the bank, together with fee income, still may not be covering expenses. For those reasons, a bank with a trust department, especially a community bank, must plan on dealing with the question of uninvested cash in an affirmative, planned manner.

All of the foregoing is merely to say there are some problems associated with operating a trust department which did not exist in previous years that must be faced. Our responsibility, as a bank supervisor, is to call them to your attention, and yours is to recognize, anticipate and plan for them. Please do not draw from this the conclusion that the regulatory burden is going to increase. A number of forces are currently in motion that will result in a significant degree of regulatory relief. The new administration will give added impetus to that process, I am certain.

We are now in an evolutionary process in bank supervision, generally, which might even be called revolutionary. In the regulatory agencies, we are facing a new decade in which it is fairly certain our budgets are going to be curtailed. Our personnel will not increase, and probably will decrease during the 1980's. However, the amount of trust assets held by banks will increase—not decrease—during that period. Faced with those realities, we currently are engaged in a long-range study of how we can continue to carry out our responsibilities. That study is still in process—it, of course, extends to all aspects of our Office's activities, and I cannot say exactly what the conclusions will be. I can offer my ideas as to what, hopefully, those conclusions will be in the trust area.

I think we'll have to conduct examinations less often and have to curtail the scope of those examinations, refining them to deal only with the most material matters. I think we'll have to develop methods of remote review. I think we'll have to change our regulations to make them more general in nature, stating certain principles to which banks must conform but leaving the details to be filled in by the banks in a form which best fits the organization of each institution, like our Chinese Wall regulation. I think we'll have to maintain and refine the traditional bank regulatory type system of discreet supervision and recognize that public corrective actions are often undesirable. And, as I have stated before, I hope that government regulation of business, generally, moves in that direction. That was my [illegible]

speech to this group, remember? It sounds like the Administration's Securities and Exchange Commission transition team has the same idea, incidentally. But that's a digression. The point is that the regulatory burden should ease significantly over the next 10 years.

And that should be kept in mind when you consider the recently proposed fee increase. Recall, the law requires us to charge an amount sufficient to cover the examination cost. Since we have not raised the fee since 1969, it should be a "given" that the statutory requirement is not being met, in view of the increases in costs which have occurred in the intervening 12 years. Under the proposed new system, the costs will always be covered. And with the changes I envision occurring during the next few years, which I have just outlined, the cost of examinations should no longer increase significantly and may begin to decline.

To return to my main point, the community bank can perform a most beneficial function for its customers through the planned provision of trust services. As I noted, the fiduciary relationships which a bank administers for its customers involve a high degree of trust and confidence. The personal relationships which characterize trusts or estates are greater *here* than in most commercial functions which the bank performs. As a result, the community bank is a more natural choice for that business than an outsider. Thus, a properly administered trust department can provide a solid link with the customer which can be exploited by the resourceful banker to obtain other business as a by-product—but not at a loss.

And, basically, it isn't difficult to get the approval of this Office, once a bank decides to open a trust department on the basis I have outlined. There is an application form to be filled in, which isn't all that hard to do, if you have planned your department properly. You're asked to project the business which will be developed in the first 3 years of operation, in terms of value of assets and anticipated gross income. Then you're asked to project your expenses and provide an anticipated net income figure. Also, you must provide a little standard material on the qualifications of the proposed trust department management, an indication of the community to be served, and an outline of the competition. The application will be investigated by one of our trust examiners who will primarily be interested in the adequacy of your planning and your commitment to support the proposed department. He or she will be pleased to offer advice, based on experience with other new departments. The application and the examiner's recommendations will be reviewed at the regional office and the recommendation of the regional administrator appended. Then it comes to Washington. If you've properly planned the operation, there should be no problem. And the bank, the community and the public interest should be the better for it.

Remarks of Donald R. Johnson, Director for Trust Examinations, before the Connecticut Bankers Association's 55th Annual Trust Conference, Hartford, Conn., May 12, 1981

Many centuries ago, we are told, there was a certain noble lady who assured her mother-in-law, "Whither thou goest I will go and whither thou lodgest I will lodge and thy people shall be my people." In reading that beautiful story, you can't help but realize that here was a noble lady willing to place her life and future in the hands of another because she felt the need to belong. She demonstrated to everyone who reads those passages that she was confident of the future. I think that as trust bankers and trust bank supervisors we can draw a lesson from that particular story.

As trust bankers, most of you are wedded to, and part of, a commercial bank and/or holding company operation. As trust supervisors, we, too, are part of a regulatory agency that puts very heavy emphasis on commercial bank supervision rather than on the specialty areas. Our past and our futures are intricately entwined with the more dominant part of the relationship. You, as trust bankers, will continue to be influenced extensively by commercial banking, availability of investable dollars and your own efforts to make yourself profitable and, thus, a contributing part of your overall banking organization.

As trust regulators, we, too, are influenced extensively by the trends in the trust industry and impacted by agency policies that are adopted for commercial examinations. Like you, we are impacted by budgetary and staffing limitations; therefore, my remarks today should be considered in the context of those factors.

The American Bankers Association published an article in the March 1981 *Trust Management Update* which was written by J. Richard Boyland, President of The Provident National Corporation in Philadelphia, Pa. That article was devoted to ABA trust division strategic planning. After discussing the first year's accomplishments of the committee under the stewardship of Bernard F. Curry, Boylan observed:

> In the absence of long range strategic planning, organizations tend to be myopic and, worse, reactive, in responding to change, whether sudden or gradual. Inaction of this sort carries a high price tag.

Boylan continued by listing the area of focus as sixfold: (1) broadening lines of business, (2) helping to increase profitability, (3) preparing the trust banker for the 1980's with management skills development, (4) undertaking initiatives to reduce excessive regulatory burden, (5) speaking out on public policies that affect

trust banking, and (6) communicating more effectively with various audiences.

Each of you should consider using the article as a basis to initiate your study, if you have not already done so. Four of those objectives are particularly important to you. The first of those is a study of your marketing approach now and as anticipated for the future.

The competitive position of the corporate trustee has changed substantially in recent years. Not only are bank trust units confronted with numerous nonfiduciary competitors (mutual funds, tax shelters, insurance gimmicks, etc.) which impact traditional markets for investment advisory and pension fund clients, but there also has been an aggressive entry of savings and loans, investment firms and insurance companies into the trust business either directly or convertly. Second, all of you should have or should be moving toward accurate accounting for trust expenses to adequately price your market product. My experience is that in many instances today the cost data available or that will be made available to management by bank controllers is both insufficient and often inaccurate. Third, once having determined where your marketing thrust is to be placed in the 1980's, you should develop the managerial skills and marketing expertise needed to implement and support the marketing program. How often, as examiners, do we see trust business accepted without full in-house expertise to perform a top professional job which the customer expects and deserves. Fourth, you have a forum provided through the *Federal Register* for making your comments known to us on proposed regulations; use it. Last, for your own individual strategic planning, I would suggest that it be thoroughly coordinated with your commercial bank and/or holding company. The best trust strategic planning can be crippled, destroyed or new markets not recognized at all unless overall organizational coordination is effective.

My emphasis thus far has been on the need for strategic planning in your organization. We both share the vital need to know where we are going in the next decade. If you know where you are going as a bank trust department and we do not, our response becomes one of reaction rather than initiative. As you are aware, government supervision often follows events. We can't always plan on how Congress perceives a problem which has arisen in the industry nor can we always plan to stop or blunt injustices before they arise. Unusual turns in the economic cycle disclose unrecognized weaknesses in our banking system or in our approach to supervision. However, the need for strategic planning is recognized by the OCC.

The *American Banker* on April 21, 1981, carried an article entitled "Comptroller's Office Begins Major Review of Examination, Supervisory Procedures." The Chief National Bank Examiner, who is chairman of the task force on strategic planning for bank supervision, announced an OCC comprehensive review of supervisory and examination procedures to prepare for anticipated changes in the banking industry. The top-to-bottom study began in January 1981 and is the most thorough review of the Comptroller's procedures for supervising national banks since the Haskins and Sells study in 1974. The goals of the new study are to anticipate changes in the banking structure as well as the environment and to effectively direct resources to meet the new challenges of the 1980's. A study is also necessary to determine how the agency will keep abreast of those developments, given increasing "constraints" on the financial and personnel resources of the Comptroller's Office. That is an ambitious program but a necessary one so that a flexible strategic plan will evolve based on the input of various divisions of the OCC. It will also entail interviews with bankers, economists, regional office officials and corporate planning consultants.

Since I have mentioned the impact of our respective managements, we must keep in mind that we, in trust, probably are not in the forefront of the thought processes of our respective managements. However, the Trust Examinations Division and Dean E. Miller, who is on the steering committee, are represented on the task force by my Assistant Director. I will attempt to provide you with some of the thoughts that have been expressed to the task force. I will also make some observations on the future of trust examinations.

In the area of deregulation, we believe that the current administration will bring about the overall reduction of regulations. That will eliminate or reduce the effect that the federal government asserts over many facets of our lives and businesses. As you are aware, the initial 60-day freeze was supplemented by an executive order requiring prior approval of OMB for most regulatory actions. No doubt, the legislation introduced is more expansive than was originally thought.

Deregulation is a very popular theme today and, in my judgment, a necessary one. I was fortunate enough to be a panel member at the National Trust Conference and discussed, among other things, some deregulation aspects of the industry. It was pointed out that deregulation certainly means a slowdown in new statutory and regulatory requirements. It will probably mean simplification of many existing requirements rather than outright elimination of a law or regulation. Often, it will mean that the regulatory agencies must find other ways to carry out their responsibilities. For example, that may mean that the supervisory agencies would consider, even more than now, the scope of the bank's internal audit or perfect offsite examinations of a reduced scale. I believe that changes will come quicker to the regulatory environment affecting financial institutions than at first was thought.

The *Washington Post* recently editorialized on the subject by stating

> Banking and the country's financial system are now changing with a speed not foreseen by Congress when it rewrote the basic law last year. The emerging pattern is merger, bridging the traditional divisions in financial services. It is raising unexpected questions for bank regulators.

The *Post* continues by stating that Congress thought it rather daring when it voted a year ago to phase out the interest rate restrictions on banks and authorize NOW accounts.

We have witnessed the country's largest insurance company, Prudential, merging with a securities broker, the Bache Group. American Express is talking about

merger with Shearson Loeb Rhodes. Money market funds have grown phenomenally and some are run by brokers who offer investment in other kinds of securities as well. The impact of those mergers and services go far beyond the banking business and may, without waiting for congressional approval, be creating a parallel banking system outside of the existing structure of bank regulation and control.

What impacts your "big brother," the commercial bank, is already impacting you in the trust business. Neither of us should "panic," but we must be able to meet the challenge, which can be done best through strategic planning. But, you may ask, "What has the OCC done to help us?"

The OCC Trust Division has consistently reviewed and modified its position on permitting certain types of investments and/or investment vehicles to permit the trust industry to take advantage of changing market practices and to become more competitive. That began in September 1976 when, under Trust Banking Circular No. 4, our position was modified to permit investment in mutual funds, which include money market funds. The only restriction was that the bank had to obtain advice of local counsel as to the state of the law in its particular jurisdiction. In June 1979, the Office issued Trust Banking Circular No. 14 that covered the use of forward contracts and repurchase agreements in trust accounts. While some parameters and requirements were set up for those vehicles, their use turned toward the question of whether the particular practice was consistent with the applicable rules of investment in the state of jurisdiction. Again, in summer 1979, Trust Banking Circular No. 2 was revised to permit trust departments to use exchange-traded put and call options. We also, in an individual ruling, permitted the lending of trust stock certificates to brokers for use in their business, under certain guidelines. The Department of Labor has now published its criteria for loaning stock certificates which largely parallels those found in Precedent & Opinion 9.2910 in the *Comptroller's Handbook for National Trust Examiners*, except for collateral requirements.

You may also know that we promulgated parameters for statistical sampling of fiduciary assets for use by the bank's internal auditor or its outside certified public accounting firm. We now have 33 large banks that either have plans approved or pending. That results in considerable savings to the bank in verifying fiduciary assets. It permits the re-allocation of internal audit dollars to other areas of the bank or trust department that need attention, for example, performing administrative audits.

In the collective funds area, the OCC has permitted use of a variety of funds, namely, index funds, foreign equity and fixed funds, natural resource funds, precious metal funds and others permitting investment in real estate, timberland, mobile homes and student loans. In other words, we have been responsive to the industry as far as possible. True, we are concerned how the assets are priced and if indeed the participants are treated fairly, but as to the types of investments, we have maintained the position that no investment is per se prudent or imprudent if it meets the needs of the participating accounts.

Let me focus briefly on another aspect of the reduction of regulatory burden through examinations. As previously mentioned, the OCC is under considerable financial and staffing constraints. While the President has authorized the Department of the Treasury to lift the current hiring freeze for the OCC, it is with a provision that the employment ceiling will be cut by 187 permanent full-time positions. Treasury will monitor our employment levels to ensure that we do not exceed our ceiling and budget limitations and will re-impose the freeze if we are not in compliance by June 30, 1981. Thirty of those positions will be cut from the Washington staff and 157 from the regional office and examining staff. In the Trust Examinations Division, there is a very small staff to provide the overall supervision of trust activities of national banks nationwide. Currently, we have 172 trust examiners, which is approximately 35 below the established staffing floor. I do not foresee any increase, and in fact, there may be a considerable decrease of trust specialists at a time when the industry is requesting more trust specialists with a greater degree of expertise.

Those of you from national banks are aware that trust examination fees had not been increased since 1969. The recent increase was substantial but it was absolutely necessary to meet the continued escalation of travel costs and salary and fringe benefits. The OCC uses a very comprehensive and restrictive budgeting process.

Any OCC strategic planning must therefore consider more efficient ways of providing supervisory oversight. It must also consider approved methods of training staff members, including equipment training for off-site examinations.

We must continue to tailor examinations to the size and rating of the departments. We now use four examination approaches, including the general, specialized and the small trust department examination. The latest addition to the group was added in April 1980. We put in a basic investigative trust examination for commercial examiners who have been given some fundamental training on examining those smaller trust departments while performing the commercial examinations. Through the four examination approaches, the OCC is making better use of its diminishing resources, both human and financial, through the reduction of travel, and due to the cross-training and career development aspects, OCC has increased the utility of its commercial examiners.

The Comptroller's Office has also moved to increase the time between examinations, except in problem trust departments. Departments that have a good rating under the uniform interagency trust rating system will only be examined once each 18 months. Each region projects annually its examination priorities and whether the examination will be on a consolidated or an individual basis.

Therefore, I believe you will see the following happen in regard to OCC trust examinations.

First, trust examiners will not visit as frequently in your bank as before, unless you have a problem trust department.

Second, greater reliance will be placed on both outside and inside audits of trust departments. We have

been moving that way since 1976 and the *Comptroller's Handbook for National Trust Examiners* has requirements for both the physical and administrative audits of trust departments. Those requirements are deemed necessary and provide some uniformity for trust departments nationwide. If that were not so, we would have trust departments where little would be done due to management's disinterest or inexperience.

Third, I see some rearranging of our examination approaches. I believe more emphasis will be put on brief testing of all trust department areas, but the work program will not be completed for some or most of the areas if sound policies and procedures are being adequately followed.

Fourth, we are experimenting now with offsite/onsite approaches to trust examining. That involves a split-team approach with, perhaps, the whole team working onsite the first week of the examination collecting documentation, electronic data processing runs and data necessary for offsite work. The offsite work will be performed in the regional or subregional office of the OCC. That approach has the positive attribute of decreasing travel for examining staff and providing greater job satisfaction since examiners will be working in their headquarters. That should aid our efforts of retaining experienced staff. Our experience so far is that the quality of the examination has not decreased, but it causes some problem with the removal of confidential documents from the bank under examination. However, the examiner is charged with the confidentiality of those documents and will see that they are protected.

Fifth, as a variation, it makes sense to tie in OCC computer terminals with a bank's computer or a servicing agent's computer. That would permit the examiner to perform an ongoing examination over a period of time and permit the acquisition of portfolio and other data without having to visit the bank. This is farther away than just performing offsite examinations.

Sixth, 10 years ago we were experimenting in trust with the examination of all trust departments of the unit banks that belong to the same holding company. We found that approach to be more efficient and to produce better results. Commercial examiners have also been experimenting with the approach within the last couple of years. It is now possible to coordinate a consolidated examination of the holding company, unit banks and all trust departments within the holding company simultaneously. That would require coordination between our 14 regions, and, at times, with the Federal Reserve. When interstate banking, including interstate trust banking, becomes a reality that approach will become even more important.

If asked to identify the areas that will impact examination and the trust business in the future, I would refer to the interstate banking question. Should there be further relaxation of the legal barriers to geographic expansion for banks, greater emphasis will be placed also on interstate trust banking. Currently there is a mix of state laws, some permitting reciprocity with neighboring states, some denying neighboring states, some denying all foreign fiduciaries from acting in the state, and so on. As you are aware, banks currently operate interstate in their lending and investment activities and have done so for years. Electronic banking capabilities, home terminals and other electronic data equipment are quite compatible and perhaps profitable as part of interstate operations. Thus, the OCC and the individual states will be faced even more than now with supervising remote trust operations.

You will remember that many of the larger banks attempted to follow their business to Florida in 1979 through establishment of trust companies. Currently, there is a moratorium on the direct or indirect establishment, acquisition and operation of a trust company across state lines until October 1, 1981, unless specifically authorized by state law. Those acquired and in operation on or before March 5, 1980, were grandfathered. That moratorium was established by Section 712 of the Depository Institutions Deregulation and Monetary Control Act of 1980, which amended 12 USC 1642, the Bank Holding Company Act. Should the moratorium be let to expire, as many believe, you will again see a move by northern banks to enter the sun belt states.

If you are going to compete with money market funds, Merrill Lynch, American Express, savings and loans and others, it is necessary that interstate banking, both trust and commercial, be seriously studied as part of your strategic planning.

Much of what I have said today affects your profitability or lack thereof. The revision of trust banking circulars concerning the use of puts and calls, repurchase agreements and various novel collective investment funds were made with the idea that you should be able to compete with others in your industry, directly or indirectly. The American Bankers Association perceived a strong emerging need among trust managers not only to qualify their profit performance against an acceptable standard of accounting principles, but, as earlier stated, to awaken the industry that trust operations could no longer be considered philosophically as a service unit without being profitable. That position has been taken by the OCC, particularly since 1976, when the new examination procedures were implemented.

The OCC published *A User's Guide for the NBSS Trust Activities Report* in June 1980. It contained information evaluating profitability information on national bank trust departments on a peer group basis. The report will be produced annually for all national banks having trust departments which administer $10 million or more in fiduciary assets. The information, drawn from the special report that accompanies the annual report of trust assets, has some inaccuracies but that is due to the lack of accuracy within some banks' systems of maintaining cost data. This year's report will be out within the next 2 weeks and will be greatly refined. The thrust here is two fold. One, it is to aid your evaluation of profitability in relation to your peer group, but, two, it is our first step toward computerization of pertinent data through our national bank surveillance system, allowing us to identify trust departments with problems. Examination report criticisms, various ratios and uniform interagency trust reporting system information will be incorporated in a data base that will help trigger onsite examinations in the future.

We believe trust bankers can no longer afford to look on trust deposits with its allocated earnings figure to be profitable. Since 1977, the Comptroller's Office has taken the position that all cash, be it income or principal, should be invested. As a rule of thumb, those funds should be invested within a week of receipt. Availability of a variety of investment vehicles, sweep and cash management systems and competition all work together to lower those uninvested balances. Therefore, your strategic plan must consider profitability, and ours must focus on revising regulations or find other ways to enable you to compete profitably so that you can be a contributing member of your banking organization.

I think that the statistics collected by this agency and other federal bank regulatory agencies show a slow, but continual, growth in personal trust assets. We believe that considerable upward repricing will occur for personal and other trust services.

We see an increasing trend toward unbundling pricing on the more traditional type of services as the departments heighten awareness of the profitability and cost considerations. Trust departments will be offering a full line of financial services, such as tax planning and budget analysis to individuals, instead of selling them only as part of larger, more expensive trust packages. The range of services, more reflective of public demand, on a profitable basis, must be offered by the industry. Other types of services may include financial counseling, investment advice, new management systems for pension funds, estate settling services to lawyers and development of real estate so that clients will have a higher rate of return.

We have also considered that changes in the Glass-Steagall Act may permit banks to sponsor commingled agency accounts for public investment. They are prohibited now, but you all are aware of the American Bankers Association's efforts to acquire legislative changes permitting such types of investments. In other words, we see the trust department of the future providing a potpourri of services on an unbundled pricing basis. We believe that both bank and trust customers will not object to paying a differential for personalized services. We note they do object paying a blanket fee for numerous services as a package that they may not completely wish, or, indeed, they may be paying for and not receiving complete services when there's a lack of expertise of the fiduciary.

We believe that there will be continuing efforts to immobilize stock certificates in depositories and toward book entry approaches. However, it is probably unlikely that the certificates will ever be completely immobilized, but a stage can be reached where physical requirements are very limited. We continue to believe that the role of the transfer agent will embody the traditional duties of receiving and effecting beneficial ownership changes albeit via sophisticated teller communication or data base transmission directly interfaced with securities depositories. We expect to see more use of inhouse minicomputers to cut costs and eliminate dependency on plane, train, bus or telephone lines. Pension funds will continue the trend of being increasingly mobile among investment managers, who are now, and will continue to be, subjected to more frequent review by plan fiduciaries. Plan sponsors will probably insist on more aggressive investments in a larger variety of vehicles to combat the inflationary pressures of the economy. You will be expected to have specialists who can deal in the commodity markets, futures or international investments.

I see larger banks increasing their interest in foreign fiduciary activities and, domestically, in purchasing foreign assets for employee benefit plans, personal trusts and investment management and agency accounts.

I also see more cooperation among federal agencies to share acquired information. As for example, three federal bank supervisory agencies now have an agreement with the Department of Labor to disclose certain basic information on violations of the Employee Retirement Income Security Act found during examination. The Securities and Exchange Commission and the three federal bank agencies jointly examine certain stock transfer servicing agents. Reevaluation of the need for regulatory confidentially will have to be reviewed by the agency since it's a sensitive item with you and with us.

The recent supreme court decision that banks may manage closed-end investment company portfolios, did not question the Federal Reserve's authorization of bank affiliate management of open-end funds, so long as the shares are marketed by independent securities firms. Banks and insurance companies have combined services and offering of single premium annuities, and Merrill Lynch's cash management account incorporates extensive services actually provided by Bank One in Ohio. Thus, I believe that I have made my point on the need for strategic planning by both you and us.

What we cannot anticipate is an important policymaker, the courts of this country. Decisions can be rendered that will establish new laws, new principles, new duties and probably liabilities. Some of the issues raised may be long-term and may not lend themselves to an early solution.

There are numerous other intangibles that affect any strategic planning such as the capital market fluctuation, some technological breakthrough or an economic or military happening that is unanticipated.

Trust bankers must continue to recognize the changing parameters of the trust business and act to meet those challenges. As you act and react, your policies and procedures must also change. You must find improved means of maintaining vigilance, as we must as trust banking supervisors. As you meet new trust banking challenges of the next decade, there must be a clear understanding of your goals and policies as established through cooperation and interface with your commercial banking departments. Without that, your trust department will be like a ship without a rudder. If it is drifting and goes no where, it can be destroyed. As you enter other competitive fields and acquire improved technology and hire specialists to meet competitive pressures, your exposure to fraud, embezzlement and misuse of funds will increase. That is particularly true when you consider that you will see the

examiner less often. Therefore, you should reach a decision on the magnitude of the risk you are willing to assume in relation to the dollars which you can spend for audit and installation of internal controls.

As President Reagan recently stated to Congress on the budget, we cannot live on the accomplishments of the past but must press forward to the uncertainities of the future. Our strategic plans are a means to that end.

Merger Decisions—July 1, 1981, to December 31, 1981

I. Mergers consummated involving two or more operating banks

II. Mergers consummated involving a single operating bank

III. Other transactions subject to the Bank Merger Act

I. Mergers consummated involving two or more operating banks

ATLANTIC NATIONAL BANK OF JACKSONVILLE,
Jacksonville, Fla., and Atlantic Bank of Jacksonville, Jacksonville, Fla., and Atlantic National Bank of Broward, Hollywood, Fla., and Atlantic First National Bank of Gainesville, Gainesville, Fla., and Atlantic National Bank of Palm Beach County, West Palm Beach, Fla., and Atlantic First National Bank of Daytona Beach, Daytona Beach, Fla., and Atlantic Bank of Orlando, Orlando, Fla., and Atlantic Bank of Tampa, Tampa, Fla., and Atlantic Bank of Largo, Largo, Fla., and Atlantic National Bank of Palatka, Palatka, Fla., and Atlantic Bank of St. Augustine, St. Augustine, Fla., and Atlantic Bank of Eustis, Eutstis, Fla., and Atlantic National Bank of Seminole, Sanford, Fla., and Atlantic Bank & Trust of Lake Wales, Lake Wales, Fla., and Atlantic Bank of Hastings, Hastings, Fla.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Atlantic Bank of Jacksonville, Jacksonville, Fla., with	$ 336,156,000	13	
Atlantic First National Bank of Gainesville, Gainesville, Fla. (3894), with	133,446,000	4	
Atlantic First National Bank of Daytona Beach, Daytona Beach, Fla. (12546), with	115,038,000	3	
Atlantic National Bank of Palatka, Palatka, Fla., (13214), with	62,351,000	2	
Atlantic Bank of St. Augustine, St. Augustine, Fla., with	53,272,000	3	
Atlantic Bank of Hastings, Hastings, Fla., with	16,314,000	1	
Atlantic Bank of Orlando, Orlando, Fla., with	110,318,000	5	
Atlantic National Bank of Seminole, Sanford, Fla. (13157), with	48,680,000	3	
Atlantic Bank of Eustis, Eustis, Fla., with	51,354,000	1	
Atlantic Bank of Tampa, Tampa, Fla., with	103,101,000	8	
Atlantic Bank of Largo, Largo, Fla., with	73,601,000	7	
Atlantic Bank & Trust of Lake Wales, Lake Wales, Fla., with	36,995,000	1	
Atlantic National Bank of Broward, Hollywood, Fla. (15166), with	197,794,000	8	
Atlantic National Bank of Palm Beach County, West Palm Beach, Fla. (13300), with	115,948,000	5	
and Atlantic National Bank of Jacksonville, Jacksonville, Fla. (6888), which had	515,816,000	2	
merged July 1, 1981, under charter of the latter and with the title "Atlantic National Bank of Florida." The merged bank at date of merger had	1,939,072,000		66

COMPTROLLER'S DECISION

Atlantic Bank of Jacksonville, Jacksonville, Fla., Atlantic First National Bank of Gainesville, Gainesville, Fla., Atlantic First National Bank of Daytona Beach, Daytona Beach, Fla., Atlantic National Bank of Palatka, Palatka, Fla., Atlantic Bank of St. Augustine, St. Augustine, Fla., and Atlantic Bank of Hasting, Hastings, Fla., and Atlantic Bank of Orlando, Orlando, Fla., Atlantic National Bank of Seminole, Sanford, Fla., and Atlantic Bank of Eustis, Eustis, Fla., and Atlantic Bank of Tampa, Tampa, Fla., and Atlantic Bank of Largo, Largo, Fla., and Atlantic Bank & Trust of Lake Wales, Lake Wales, Fla., and Atlantic National Bank of Broward, Hollywood, Fla., and Atlantic National Bank of Palm Beach County, West Palm Beach, Fla., and Atlantic National Bank of Miami,* Miami, Fla., and Atlantic National Bank of Jacksonville, Jacksonville, Fla., are majority-owned and controlled by Atlantic Bancorporation, Jacksonville, a registered bank holding company. As such, this proposed merger is a corporate reorganization which will have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the merger.

May 22, 1981

* Subsequent to the decision, the Atlantic National Bank of Miami became a nonparticipant and did not merge.

SUMMARY OF REPORT BY ATTORNEY GENERAL

All banks are wholly owned subsidiaries of the same bank holding company. As such, their proposed merger is essentially a corporate reorganization and would have no effect on competition.

* * *

BARNETT BANK OF MIAMI, NATIONAL ASSOCIATION,
Miami, Fla., and Barnett Bank of Broward County, Fort Lauderdale, Fla., and Barnett Bank of Homestead, Homestead, Fla.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Barnett Bank of Homestead, Homestead, Fla., with	$ 70,383,000	2	———
Barnett Bank of Broward County, Fort Lauderdale, Fla., with	368,760,000	13	———
and Barnett Bank of Miami, National Association, Miami, Fla. (13828), which had	490,922,000	13	———
consolidated July 1, 1981, under charter of the latter (13828) and with the title "Barnett Bank of South Florida, National Association." The consolidated bank at date of consolidation had	930,065,000	———	28

COMPTROLLER'S DECISION

Barnett Bank of Miami, National Association, Miami, Fla., Barnett Bank of Homestead, Homestead, Fla., and Barnett Bank of Broward County, Fort Lauderdale, Fla., are majority-owned and controlled by Barnett Banks of Florida, Inc., a registered bank holding company. This proposed consolidation is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the consolidation.

May 22, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The consolidating banks are all wholly owned subsidiaries of the same bank holding company. As such, their proposed consolidation is essentially a corporate reorganization and would have no effect on competition.

* * *

FIRST & MERCHANTS NATIONAL BANK,
Richmond, Va., and The National Bank of Fairfax, Fairfax County (P.O. Burke), Va.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The National Bank of Fairfax, Fairfax County (P.O. Burke), Va. (6389), with	$ 162,645,000	13	———
and First & Merchants National Bank, Richmond, Va. (1111), which had	2,192,336,000	103	———
merged July 1, 1981, under charter and title of the former bank (1111). The merged bank at date of merger had	2,351,140,000	———	116

COMPTROLLER'S DECISION

On February 23, 1981, application was made to the OCC for approval for The National Bank of Fairfax, Fairfax County (P.O. Burke), Va. (First & Merchants), under the charter and with the title of "First & Merchants National Bank." The application is based on an agreement signed by the proponents on January 28, 1981. As of December 31, 1980, First & Merchants, a subsidiary of First and Merchants Corporation, Richmond, a bank holding company which ranks as the fourth largest in the state, operated 102 banking offices in 39 cities and counties in Virginia and had total deposits of approximately $1.8 billion. As of the same date, Fairfax, an independent bank, which operated 12 offices in Fairfax (Fairfax County) and one office in adjacent Prince William County, had total deposits of approximately $145 million.

Fairfax serves an area known locally as "Northern Virginia," which is composed of the counties of Arlington, Fairfax and Prince William and the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park. It derives almost 84 percent of its deposits from Northern Virginia. First & Merchants operates a total of 13 offices in Northern Virginia; the closest offices of the two proponents are less than 1 mile apart, although their head offices are over 100 miles apart.

As of June 30, 1980, Northern Virginia was served by almost 300 offices operated by 21 commercial banks, holding a total of almost $3.3 billion in deposits. Fairfax held a total of 4.3 percent of those deposits and ranked as the ninth largest commercial bank in Northern Virginia, while the Northern Virginia offices of First & Merchants held a total of 4.8 percent, ranking as the seventh largest. The resulting bank, holding 9.1 percent of total commercial bank deposits in Northern Virginia, would rank a distant fourth among the 21 commercial banks operating there, with the third largest holding approximately 16.5 percent and the top three controlling slightly in excess of 56 percent. Consummation of the proposal would not result in what is commonly denoted as a concentrated market.

The proponents are in close proximity to one another, have relatively the same volume of local deposits, and have a similar marketing orientation. However, the availability of numerous other commercial banks and other types of financial institutions within Northern Virginia mitigates any negative effects of the elimination of a single competitive alternative. In fact, consummation of the proposal should affect competition positively, as it will create a fourth significant commercial bank within Northern Virginia to provide further competitive incentives to the three existing banks now dominating the area.

The financial and managerial resources of both banks are considered satisfactory. After the consummation of the proposed merger, the resulting bank will be able to draw on the financial and managerial resources of its parent, First & Merchants Corporation. Consequently, the future prospects of the resulting bank appear favorable, as does its ability to effectively enhance its competitiveness within the market.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicants' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act for the applicants to proceed with the proposed merger.

April 28, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed the proposed transaction and conclude that it would have no effect on competition.

* * *

ELLIS NATIONAL BANK OF CLEARWATER, Clearwater, Fla., and Ellis Harbor Bank, Safety Harbor, Fla.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Ellis Harbor Bank, Safety Harbor, Fla., with	$ 7,011,000	1	
and Ellis National Bank of Clearwater, Clearwater, Fla. (16143), which had	8,842,000	1	
merged July 6, 1981, under charter (16143) and title of the latter. The merged bank at date of merger had	16,951,000		2

COMPTROLLER'S DECISION

Ellis Harbor Bank, Safety Harbor, Fla., and Ellis National Bank of Clearwater, Clearwater, Fla., are majority-owned and controlled by Ellis Banking Corporation, Bradenton, Fla., a registered bank holding company. This proposed merger is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the merger.

June 2, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The merging banks are both wholly owned subsidiaries of the same bank holding company. As such their proposed merger is essentially a corporate reorganization and would have no effect on competition.

* * *

WACHOVIA BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, Winston-Salem, N.C., and The Bank of Belmont, Belmont, N.C.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The Bank of Belmont, Belmont, N.C., with	$ 41,071,000	4	———
and Wachovia Bank and Trust Company, National Association, Winston-Salem, N.C. (15673), which had	5,570,954,000	200	———
merged July 7, 1981, under the charter and title of the latter (15673). The merged bank at date of merger had	5,612,495,000	———	204

COMPTROLLER'S DECISION

On January 7, 1981, application was made to the OCC for prior written approval for The Bank of Belmont, Belmont, N.C. (Bank of Belmont), to merge into Wachovia Bank and Trust Company, N.A., Winston-Salem, N.C. (Wachovia). The application is based on an agreement finalized between the proponents on December 11, 1980. As of September 30, 1980, Wachovia, a subsidiary of The Wachovia Corporation, Winston-Salem, a registered bank holding company, and the largest commercial bank in North Carolina in terms of deposits, operated through 201 offices in 44 counties statewide and held total domestic deposits of approximately $3.5 billion. As of the same date, Bank of Belmont had total deposits of $37 million and operated through its head office and three branches, all of which are within 2 miles of the head office in Belmont, situated along the eastern boundary of Gaston County.

The proponents assert that Bank of Belmont derives the bulk of its deposits from an area directly contiguous to Belmont, including the communities of North Belmont, Mount Holly and Cramerton, but do not provide data supporting that assertion. However, due to the limited size, the scope of operations and the perceived marketing strategy of Bank of Belmont, considered in conjunction with the fact that the remainder of Gaston County and areas contiguous to the area served by Bank of Belmont in neighboring Mecklenburg County on the east are already served by numerous offices of other financial institutions, including Wachovia, that assertion does appear reasonable. Nine offices of four commercial banks, including all four offices of Bank of Belmont, operate in that area. Bank of Belmont holds slightly in excess of 55 percent of total commercial bank deposits held by banking offices within the Belmont area. Wachovia, which operates no offices within the Belmont area but does have offices in Gaston County (the closest is 8 miles distant) and in the Charlotte area of Mecklenburg County (the closest is 9 miles distant) currently holds an insignificant 1.7 percent of commercial bank deposits derived from the area; such deposits total less than .1 percent of Wachovia's total domestic deposits. Consummation of the proposal would make Wachovia the third largest of the seven commercial banks operating in Gaston County, holding only 14.7 percent of county commercial bank deposits, with the two larger banks controlling 44 and 24 percent of such deposits, respectively. Although Wachovia could enter the Belmont area *de novo*, this proposal is a more efficient means of establishing it as a viable competitor there.

The Bank Merger Act requires this Office to consider

> . . . the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served.

The financial and managerial resources of both banks are considered satisfactory. After consummation of the proposed merger, the resulting bank will be able to offer the Belmont area a greater mix of financial services based on the financial and managerial resources of Wachovia, which should affect competition within the area positively. The future prospects of the resulting bank appear favorable, as does its ability to further enhance competition within the market.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities, reveals no evidence that the applicants' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act (12 USC 1828(c)) for the applicants to proceed with the proposed merger.

June 6, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

Gaston County (1970 population 148,000) is located in the south central region of North Carolina. Its principal city, Gastonia (population 50,000), is located approximatley 20 miles west of Charlotte, North Carolina's largest city. Belmont (population 5,000) is located between these two cities about 5 miles east of Gastonia.

Applicant has two offices located in Gastonia. Each of these offices is located approximately 6 to 9 miles from Bank's offices in Belmont. Because of the short distances between these offices, it appears that the proposed merger would eliminate some existing competition between Applicant and Bank.

Selection of an appropriate geographic market within which to assess the effect of the proposed merger on concentration in commercial banking is difficult because of the proximity of Gaston County to Charlotte. We note, however, that the four largest of the nine banks operating offices in Gaston County hold 85.5 percent of county bank deposits. Applicant is the seventh largest county bank ($10.6 million in total deposits, including $4 million in IPC demand deposits), and Bank is the third largest banking organization in

the county Applicant holds 3.3 percent of county bank deposits and Bank 11.3 percent. If the proposed merger is consummated, the resulting bank would hold 14.7 percent of the county's deposits, and the concentration among the four largest banks in the county would increase from 85.5 to 88.9 percent

We conclude that the proposed merger would have an adverse effect on competition.

* * *

NEW JERSEY NATIONAL BANK,
Trenton, N.J., and Two Branches of First National State Bank of South Jersey, Trenton, N.J.

Names of banks and type of transaction	Total assets*	Banking offices: In operation	Banking offices: To be operated
Two Branches of First National State Bank of South Jersey, Trenton, N.J. (13039), with	$ 752,571,000	2	
were purchased July 10, 1981, by New Jersey National Bank, Trenton, N.J. (1327), which had	1,201,152,000	53	
After the purchase was effected, the receiving bank had	1,196,604,000		55

COMPTROLLER'S DECISION

On February 11, 1981, application was made to the OCC for prior written consent for New Jersey National Bank, Trenton, N.J (NJNB), to purchase certain assets and assume certain liabilities of the Farnsworth Avenue Branch and the Route 206 Branch (Bordentown Branches) of First National State Bank of South Jersey, Trenton. The Bordentown Branches, approximately one-half mile apart, are in Bordentown, Burlington County, N.J. On May 9, 1979, the Comptroller approved the merger of First National State Bank of Central Jersey with First National Bank of South Jersey, with the title of "First National State Bank of South Jersey" (FNSB). As a condition to that approval, the Comptroller required the divestiture of seven branch offices of two merging organizaitons. The divestiture and acquisition of two of those branches is the subject of this application. Consummation of this proposed transaction would satisfy, in part, the amended terms of the 1979 approval.

On September 30, 1980, NJNB held total deposits of $889 million and, at year-end 1980, was the fourth largest commercial bank in New Jersey. NJNB operates 48 branches in nine counties; only one of those branches is in Burlington County, 13 miles from Bordentown. On September 30, 1980, the Bordentown Branches held total deposits of $17 million

Applicants suggest that the appropriate market for consideration of the competitive aspects of this proposal is Bordentown. There is only one other bank, operating two branches, in Bordentown, but it holds 71 percent of Bordentown's deposits. Using the applicants' delineated market, this transaction would merely substitute one bank (NJNB) for another bank (FNSB) and thereby would have no effect on competition.

The Federal Reserve Bank of Philadelphia, however, suggests that the appropriate market is significantly larger and encompasses the Trenton market. Bordentown is a suburb of Trenton, 6 miles to the north. At June 30, 1979, there were 25 commercial banks operating in the Trenton market. NJNB was the largest with 25.1 percent of market deposits; FNBS was second with 7.9 percent. The deposits of the Bordentown Branches represented only .9 percent of market deposits. This transaction would have an insignificant effect on competition within the Trenton market, assuming that it is the appropriate market, inasmuch as the percentage change in market share concentration would be minimal and there would be no decrease in the number of commercial banks in the Trenton market. Therefore, regardless of which market is used, this proposal would not violate the standards found in the Bank Merger Act.

The financial and managerial resources of NJNB are satisfactory, and future prospects appear favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that NJNB's record of helping to meet the credit needs of its community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the proponents to proceed with the proposal
May 22, 1981

The Attorney General's report was not received

* Asset figures are for entire bank and as of call dates immediately before and after transaction

* * *

THE FIRST NATIONAL BANK OF TOMS RIVER, N.J.,
Toms River, N.J., and Two Branches of First National State Bank of West Jersey, Burlington Township, N.J.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Two Branches of First National State Bank of West Jersey, Burlington Township, N.J. (1222), with	$266,784,000	2	
were purchased July 24, 1981, by The First National Bank of Toms River, N.J., Toms River, N.J. (2509), which had	537,431,000	21	
After the purchase was effected, the receiving bank had	607,926,000		23

COMPTROLLER'S DECISION

On February 10, 1981, application was made for prior written consent for The First National Bank of Toms River, N.J., Toms River, N.J (Toms River), to purchase certain assets and assume certain liabilities of the Egg Harbor Office and the Pomona Office of First National State Bank of West Jersey, Burlington Township, New Jersey (FNSB—West). Those branch offices are in Egg Harbor City and Galloway Township, respectively, and both municipalities are in Atlantic County, New Jersey. On May 9, 1979, the Comptroller approved the merger of First National State Bank of Central Jersey with First National Bank of South Jersey under the title of First National State Bank of South Jersey (FNSB—South). As a condition to that approval, the Comptroller required the divestiture of seven branch offices of two bank subsidiaries of First National State Bancorporation, the parent holding company of FNSB—West and FNSB—South. The divestiture and acquisition of two of those branches is the subject of this application. Consummation of this proposed transaction would satisfy, in part, the amended terms of the 1979 approval.

On December 31, 1980, Toms River held total deposits of $430 million and operated 22 branches, all in Ocean County. On the same date, the Egg Harbor and Pomona branches held combined total deposits of $21 million. The relevant geographic market of this proposal is the Atlantic City, N.J., market. There are presently eight commercial banks which operate 59 offices in the relevant market. Earlier this year, however, the Comptroller approved the divestiture of two Atlantic City branches of FNSB—South; each branch was acquired by a commercial bank previously not present in the Atlantic City market. Consummation of those transactions will increase the number of commercial banks in the relevant market to 10. Toms River currently has no offices in the Atlantic City market and its closest office is 23 miles from the nearer of the two subject branches to be divested. The proposal would further increase the number of commercial banks in the market to 11 and further reduce First National State Bancorporation's dominance in the market.

First National State Bancorporation, through FNSB—South and FNSB—West, is the largest banking organization in the relevant market with 46.1 percent of market deposits (prior to the above referenced divestitures). FNSB—West is the seventh largest commercial bank in the relevant market with 2.2 percent of respective deposits. Upon consummation of this proposal, Toms River will assume that position. Although Toms River could enter the Atlantic City market *de novo*, this proposal is a more efficient means of establishing it as an additional and viable competitor and, therefore, the proposal has a procompetitive effect.

The financial and managerial resources of Toms River are satisfactory, and future prospects appear favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that Toms River's record of helping to meet the credit needs of its community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the proponents to proceed with the proposal.

May 22, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this propsed transaction and conclude that it would not have significant adverse competitive effects.

* * *

* Asset figures are for the whole bank as of call dates immediately before and after transaction

LAKE SHORE NATIONAL BANK,
Chicago, Ill., and Upper Avenue Bank, Chicago, Ill.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Upper Avenue Bank, Chicago, Ill., with	$131,720,358	1	———
and Lake Shore National Bank, Chicago, Ill. (14475), which had	299,214,093	1	———
merged July 24, 1981, under the charter and title of latter bank (14475). The merged bank at date of merger had	417,071,423	———	2

COMPTROLLER'S DECISION

On February 13, 1981, an application to merge Upper Avenue Bank, Chicago, Ill. (Upper Avenue), into Lake Shore National Bank, Chicago, Ill. (Lake Shore), under the charter and title of Lake Shore was filed with this Office. The application is based on an agreement executed by Upper Avenue and Lake Shore dated February 2, 1981

As of December 31, 1980, Lake Shore held total deposits of $244 million, and Upper Avenue held total deposits of $134 million Both banks are unit banks located within three blocks of each other on the near northside of downtown Chicago. Both banks are in a portion of Chicago which enables them to attract customers from the near northside, the northern suburbs and the central portion of the city.

Applicants suggest that the city is the area from which Upper Avenue draws 80 percent of its total deposits and that Lake Shore obtains 80 percent of its total deposits from the larger area of Cook County. The application then cites the *de minimus* shares of Lake Shore, .51 percent, and Upper Avenue, .27 percent, of domestic deposits in Cook County as support for the proposition that the effect of this transaction would be negligible. While this Office does not believe that the geographic markets of those banks are as large as represented, nevertheless we do find that the effect of the proposed transaction would be *de minimus* That conclusion is based on the dominance by the eight largest banks in Chicago whose combined market share is approximately 80 percent of domestic deposits and the large number of banking alternatives available to customers presently using the services of Upper Avenue, the bank to be acquired.

The financial and managerial resources of Lake Shore and Upper Avenue are satisfactory. The future prospects of both banks are good although the prospects of the combined institution may be more favorable because it will have a strengthened ability to compete with Chicago's larger banks, stemming from its greater size.

A review of the record of this applicant and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that Lake Shore's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the required written approval of the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the proposed merger.

June 19, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have an effect on competition.

* * *

BARNETT BANK OF MANATEE COUNTY,
Bradenton, Fla., and Westside National Bank of Manatee County, Bradenton, Fla.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Barnett Bank of Manatee County, Bradenton, Fla., with	$ 97,301,128	3	———
and Westside National Bank of Manatee County, Bradenton, Fla (15318), which had	92,592,279	2	———
consolidated July 31, 1981, under charter of the latter and with the title "Barnett Bank of Manatee County, National Association." The consolidated bank at date of consolidation had	189,893,408	———	5

COMPTROLLER'S DECISION

After due consideration of all of the factors, the Comptroller of the Currency approved this transaction. A formal decision enumerating the factors considered will be available at a later date

SUMMARY OF REPORT BY ATTORNEY GENERAL

Manatee County, in which all of the four offices of Applicant and Bank are located, is on Florida's southwest Gulf coast, at the mouth of Tampa Bay The county's economy is diversified and has been developing

steadily over the past several years. A substantial increase in the county's population of approximately 143,000 is projected over the next 10 years. The city of Bradenton, in the far western part of Manatee County, is the economic hub of the county and its largest city. It is in this far western area of the county—in and around Bradenton and along the coast—that the county's population and commerce are concentrated. The central and eastern areas of the county are rural and sparsely populated.

Ten commercial banking organizations operate 23 banking offices in Manatee County. All of these offices (including the four offices of Applicant and Bank) are located in or near Bradenton, within an 8-mile radius of Bradenton's city center. The closest offices of Applicant and Bank (Applicant's branch and Bank's main office) are approximately 2.5 miles apart. The main offices of Applicant and Bank are approximately 6 miles apart.

The area within which it is appropriate to assess the competitive effects of the proposed consolidation is approximated by Manatee County.* As of June 30, 1979, the four largest banking organizations in Manatee County together held 71.2 percent of total county deposits. The respective shares of total county deposits held by Applicant and Bank were 10.2 percent, the fifth largest share, and 9.2 percent, the sixth largest share. If the proposed consolidation were consummated, Barnett would become the third largest banking organization in the county, with 19.4 percent of total county deposits, and concentration among the four largest banking organizations in the county would increase from 71.2 to 80.4 percent.

Thus, the proposed consolidation would eliminate existing competition between Applicant and Bank and result in a significant increase in concentration.

We conclude that the proposed consolidation would have a significantly adverse effect on competition.

* The Application states that there is relatively little economic integration between Manatee County and adjacent counties, and treats Manatee County as the relevant geographic market.

* * *

THE FIRST NATIONAL BANK OF ATLANTA,
Atlanta, Ga., and The First Bank of Clayton County, Morrow, Ga.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
The First Bank of Clayton County, Morrow, Ga., with	$ 25,951,000	5	———
and The First National Bank of Atlanta, Atlanta (1559), which had	3,066,855,000	70	———
merged July 31, 1981, under charter and title of the latter. The merged bank at date of merger had	3,085,228,000	———	75

COMPTROLLER'S DECISION

On March 30, 1981, application was made to the OCC for prior written consent for the First Bank of Clayton County, Morrow, Ga. (FBCC), to merge into The First National Bank of Atlanta, Atlanta, Ga. (First Atlanta). The application is based on an agreement, as amended, signed by the proponents on January 20, 1981. As of December 31, 1980, First Atlanta, the principal subsidiary of First Atlanta Corporation, Atlanta, a bank holding company, operated through almost 70 offices throughout Fulton and Dekalb counties and a single office in Clayton County and held total deposits of approximately $2.1 billion. As of the same date, FBCC, an independent bank operating through five offices, all in Clayton County, held total deposits of $21.9 million.

There are five commercial banks headquartered in Clayton County, holding total deposits, as of June 30, 1980, of $178.4 million. FBCC, the smallest of the two independent banks and also the smallest overall, controls 12.9 percent of county deposits; the three largest competitors, all affiliates of multibank holding companies, control 26.6, 22 and 17.6 percent of county deposits, respectively. FBCC derives slightly in excess of 91 percent of its deposits from within Clayton County. First Atlanta, which has only a single Clayton County office (under state law that office is permitted to operate in the county only because it is located at the Atlanta regional airport), derives less than 1 percent of its total deposits from within the county. Should the merger be consummated, the resulting bank would become the fourth largest commercial bank in the county. Under Georgia law, First Atlanta may not establish *de novo* offices in Clayton County, but may only expand there through acquisition of existing banks. Consummation of the proposal would allow First Atlanta to enter Clayton County and, while First Atlanta would be a substitute for an existing bank competitor within the county, its more extensive available banking services and significant financial strength would be expected to have a positive effect on competition in the area.

The financial and managerial resources of both banks are considered satisfactory. After the consummation of the proposed merger, the resulting bank will also be able to draw on the financial and managerial resources of its parent, First Atlanta Corporation. Consequently, the future prospects of the resulting bank appear favorable, as does its ability to effectively enhance its competitiveness in the area.

A review of the record of this application and other information available to this Office as a result of its reg-

ulatory responsibilities, reveals no evidence that the applicants' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the proposed merger.

June 30, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed the proposed transaction and conclude that it would have only a *de minimus* effect on competition.

* * *

THE NATIONAL BANK OF JACKSON, Jackson, Mich., and Union Savings Bank of Manchester, Manchester, Mich.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
Union Savings Bank of Manchester, Manchester, Mich., with	$ 19,636,000	4	———
and The National Bank of Jackson, Jackson, Mich. (13741), which had	255,476,000	16	———
merged July 31, 1981, under the charter and title of latter bank (13741). The merged bank at date of merger had	271,661,000	———	20

COMPTROLLER'S DECISION

On January 12, 1981, application was made to the OCC for approval to merge Union Savings Bank of Manchester, Manchester, Mich. (Union), into The National Bank of Jackson, Jackson, Mich. (NBJ). The application is based on an agreement finalized between the proponents on November 19, 1980.

At September 30, 1980, NBJ had total deposits of $206 million, held in its head office and 15 branches, all in Jackson County, ranking it as the second largest commercial bank in the Jackson area with 38.3 percent of area commercial bank deposits. As of the same date, Union had total deposits of $19 million, held in its head office and three branches, all in Manchester. Union ranked as the second largest of the two commercial banks operating and headquartered in the Manchester area, holding slightly in excess of 44 percent of area deposits. Another bank, headquartered in Ann Arbor, Mich., operates two branches in the Manchester area, but deposit data on those newly established branches were not available. The area is also served by offices of two savings and loan associations.

Union and NBJ are in separate, although adjacent, banking areas. Union derives slightly in excess of 85 percent of its deposits from an area directly contiguous to Manchester, NBJ derives only a nominal 1.4 percent of its deposits from that area. Similarly, Union derives only 1.3 percent of its deposits from the areas served by NBJ offices and from which NBJ derives the bulk of its deposits. The closest offices of the two banks are approximately 15 miles apart. Consequently, consummation of this proposal would substitute NBJ for Union in the Manchester area. NBJ could, under Michigan statute, enter the area around Manchester *de novo*, but it could not enter Manchester other than through acquisition. The proposal provides an efficient means of establishing NBJ as a viable competitor in the area, with several alternative competitors still remaining.

The financial and managerial resources of NBJ are satisfactory. However, the financial and managerial factors relative to Union are unclear due to operating losses, asset problems and the lack of a full-time, permanent chief executive officer. Those problems are compounded by Union's relatively small size and the competition it experiences from substantially larger financial organizations in nearby metropolitan areas. The future prospects of the resultant bank are favorable, as the resultant bank should enhance the competitive atmosphere of the Manchester area by providing a more effective, competitive banking alternative there.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities, reveals no evidence that the applicants' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act for the applicants to proceed with the proposed merger.

June 8, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed the proposed transaction and conclude that it would have no effect on competition.

* * *

VIRGINIA NATIONAL BANK, Norfolk, Va., and The Farmers Exchange Bank of Coeburn, Coeburn, Va.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
The Farmers Exchange Bank of Coeburn, Coeburn, Va., with	$ 37,667,000	2	———
and Virginia National Bank, Norfolk, Va. (9885), which had	2,715,880,000	153	———
merged August 1, 1981, under the charter and title of latter bank (9885). The merged bank at date of merger had	2,750,907,000	———	155

COMPTROLLER'S DECISION

On March 12, 1981, an application to merge The Farmers Exchange Bank of Coeburn, Coeburn, Va. (Farmers Bank), into Virginia National Bank, Norfolk, Va. (VNB), under the charter and title of VNB was filed with this Office. The application is based on an agreement executed by Farmers Bank and VNB dated October 28, 1980.

VNB operates approximately 177 banking offices in 53 counties and cities throughout Virginia. As of September 30, 1980, it held total deposits of $2.1 billion. It ranks as the second largest banking organization in the Commonwealth of Virginia.

Farmers Bank maintains two offices in Wise County in the southwest portion of Virginia. It serves Coeburn and surrounding portions of Wise County, whose primary industry is coal mining. As of September 30, 1980, Farmers Bank held $31 million in total deposits.

VNB and Farmers Bank are not direct competitors. VNB does not operate an office in Wise County where the Coeburn bank is located. VNB's closest office is 25 miles away in Nickelsville, Va. Farmers Bank obtains over 90 percent of its deposits and 85 percent of its loans from the area within a 5-mile radius of Coeburn. VNB has only 15 accounts with $224,000 in deposits in Coeburn. Its office in Nickelsville is accessible from Coeburn by using a series of winding secondary roads. VNB cannot enter Coeburn by *de novo* branching. The competitive effects of the proposal are virtually negligible.

The financial and managerial resources and future prospects of the existing and proposed institutions are good. The citizens of Coeburn and surrounding vicinity should derive an enhanced degree of service by the greater financial capability of the combined institution.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that VNB's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This Office concludes the proposal will not violate the standards found in the Bank Merger Act, 12 USC 1828(c), and the application is therefore approved.

June 25, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed the proposed transaction and conclude that it would have no effect on competition.

* * *

OLD NATIONAL BANK OF WASHINGTON, Spokane, Wash., and One Branch of Rainier National Bank, Seattle, Wash.

Names of banks and type of transaction	*Total assets**	*Banking offices*	
		In operation	*To be operated*
One Branch of Rainier National Bank, Seattle, Wash. (4375), with	$5,320,395,000	137	———
was purchased August 7, 1981, by Old National Bank of Washington, Spokane, Wash. (4668), which had	1,368,936,000	79	———
After the purchase was effected, the receiving bank had	1,342,626,000	———	80

COMPTROLLER'S DECISION

On August 27, 1980, application was made for prior written consent for Old National Bank of Washington, Spokane, Wash. (ONB), to purchase the assets and assume the liabilities of the 145th and 15th Northeast Branch of Rainier National Bank, Seattle, Wash. (Rainier). On December 31, 1979, Rainier, the second largest commercial bank in Washington, had total deposits of $3.3 billion, representing approximately 20 percent of the state's total deposits, and operated 124 branches throughout the state. The 145th and 15th Northeast Branch of Rainier had total deposits of approximately $10 million. On the same date, ONB, which operates 80 offices and ranks as the state's fifth largest commercial bank, had total deposits of $970 million.

* [illegible] immediately be- [illegible]

The relevant geographic market for analysis in this application is a 4-square mile area in northeast Seattle. ONB now has no offices within the market, but five other banks currently have total deposits of $120.2 million lodged in eight offices there. The market also includes three offices of two mutual savings banks and one savings and loan association, which hold total deposits of $68.6 million. Because the state's branching statute (RCW 30.40.020) restricts *de novo* branching to the city and the unincorporated areas of the county in which a bank's main office is located, the only permissible manner in which a branch can be established in an area outside the bank's home county is by acquiring an existing bank or a branch of a bank already operating there. Consequently, the most feasible method by which ONB can establish branches in that part of Seattle is by acquiring exisiting branches from one of the five banks already in the market. Currently, the market is dominated by Seattle-First National Bank, the largest commercial bank in the state, which controls 44 percent of the market's total deposits. Rainier now ranks as the market's third largest bank, with about 16 percent of total market deposits. Should the proposed acquisition be completed, ONB would become the fourth largest of six commercial banks operating in the market, controlling 8.3 percent of the market's total deposits. Currently the ONB branch closest to the target office is in adjoining Snohomish County, about 6.5 miles distant; the closest existing ONB branch in King County is 8.5 miles to the south. In both instances, there are numerous, intervening banking offices of competitors. Accordingly, consummation of this proposal will have no significant effect on competition.

A review of the record of this application and other information available to this Office as a consequence of its regulatory responsibilites reveals no evidence that the proponent's record of helping to meet the credit needs of its community, including low and moderate income neighborhoods, is less than satisfactory.

The financial and managerial resources of ONB are satisfactory, and its future prospects are favorable.

This application is approved, conditioned on the submission to and acceptance by the regional office, prior to the consummation of the proposed transaction, of a plan for the injection of an additional $15 million in equity capital into ONB by its parent, Old National Bancorporation.

This decision is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the banks to proceed with the proposal.

December 31, 1980

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have an adverse effect upon competition.

* * *

THE FIRST NATIONAL EXCHANGE BANK OF SIDNEY, Sidney, Ohio, and The Loramie Banking Company, Fort Loramie, Ohio

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The Loramie Banking Company, Fort Loramie, Ohio, with	$25,249,000	2	
and The First National Exchange Bank of Sidney, Sidney, Ohio (5214), which had	65,761,000	4	
merged August 29, 1981, under charter of the latter and with the title of "The First National Bank." The merged bank at date of merger had	91,010,000		6

COMPTROLLER'S DECISION

On January 12, 1981, application was made to the OCC for prior written consent for The Loramie Banking Company, Fort Loramie, Ohio (Loramie), to merge into The First National Exchange Bank of Sidney, Sidney, Ohio (First National), with the title of "The First National Bank." The application is based on an agreement finalized between the proponents on December 12, 1980. As of June 30, 1980, First National, an independent bank operating through its head office and three branches, all of which are within the corporate limits of Sidney, held total deposits of $41.7 million. As of the same date, Loramie, also an independent bank, operated through its head office and a single branch, located 3 miles south of the head office, and held total deposits of $20.2 million.

The proponents operate in and derive the bulk of their deposits from separate and distinct, though geographically proximate, service areas. There is no geographic and little customer overlap between the primary service areas of the proponents. The closest offices of the proponents are 11.5 miles distant. First National derives the bulk of its deposits from an area directly adjacent to Sidney and from Piqua, Ohio, to the south of Sidney; Loramie derives the bulk of its deposits from an area directly surrounding Fort Loramie and from New Bremen, Ohio, to the north of Fort Loramie, and Versailles, Ohio, to the southwest of Fort Loramie. First National derives only 3 percent of its deposits from the area primarily served by Loramie. Loramie derives only 3.3 percent of its deposits from the area primarily served by First National. The area sepa

rating the two service areas is rural, with minimal population. Seven commercial banks, including Loramie, operate offices within the primary area served by Loramie, those offices hold total deposits of approximately $144 million. Loramie is the fifth largest of the area commercial bank competitors, holding 14.1 percent of area deposits. Subsequent to the merger, the resulting bank will remain as the fifth largest competitor in that area. Several offices of savings and loan associations and other financial institutions also provide financial services to the area. Under state law, First National would be permitted to enter the area with *de novo* offices, as would any bank headquartered in Shelby County or a county contiguous to it. However, the proposed merger appears to be a more efficient method of expansion into the area by First National, allowing the resulting bank to provide direct competition in that area at a more effective, substantive level. Consequently, consummation of the proposal is viewed as having a positive effect on competition in the area.

The financial and managerial resources of both banks are considered satisfactory. After the consummation of the proposed merger, the resulting bank's financial and managerial resources will provide a sound basis for future operations. The future prospects of the resulting bank appear favorable, as does its ability to effectively enhance its competitiveness in the market.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities, reveals no evidence that the applicants' records of helping to meet the credit needs of their communities are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the proposed transaction.

June 30, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The Attorney General's report was not received.

* * *

BANCOHIO NATIONAL BANK,
Columbus, Ohio, and The State Bank & Trust Company of Lake County, Mentor, Ohio

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The State Bank & Trust Company of Lake County, Mentor, Ohio, with	$ 32,323,000	5	
and BancOhio National Bank, Columbus, Ohio (5065), which had	4,815,269,000	243	
merged August 31, 1981, under charter and title of the latter. The merged bank at date of merger had	4,838,577,000		248

COMPTROLLER'S DECISION

On October 16, 1980, application was made to the OCC for prior written approval for The State Bank & Trust Company of Lake County, Mentor, Ohio (State Bank), to merge into BancOhio National Bank, Columbus, Ohio (BancOhio). The application is based on an agreement finalized by the proponents on August 28, 1980. As of June 30, 1980, BancOhio, a subsidiary of BancOhio Corporation, Columbus, a registered bank holding company, was the largest bank in Ohio with total deposits of $3.6 billion and operated over 240 branches in 43 counties throughout the state. As of the same date, State Bank, an independent bank, had total deposits of $22.5 million, held in its head office and four branches, all in Lake County in northeastern Ohio.

The two proponents compete in separate, but adjacent areas. The proponents assert that the primary area served by State Bank is limited to Lake County but do not provide data on the source of the bank's deposits to support that assertion. However, absent that data, the limited size, the scope of operations and the stated marketing strategy of State Bank, considered in conjunction with the availability of numerous alternative sources of financial services in and surrounding that area, make such an assertion reasonable. BancOhio operates no offices in Lake County but does have several in contiguous Cuyahoga and Geauga counties. The closest BancOhio office to an office of State Bank is 6 miles distant. Data is not provided on the deposits held in BancOhio offices which are derived from the area from which State Bank derives the bulk of its business. Presumably, such deposits would not be significant, either in terms of BancOhio's total deposits or the total county-wide deposits of all commercial banks, due to the existing availability of numerous alternative sources of financial services in and around Lake County.

Nine commercial banks currently operate over 50 offices in Lake County, including all five offices of State Bank. State Bank holds slightly in excess of 4 percent of the deposits held by banking offices in the county; the two largest commercial banks in the county control more than 76 percent of county-wide deposits and operate almost one-half of all the commercial bank offices in the county. While it could enter the area *de novo*, the proposal provides a more efficient means of establishing BancOhio as a viable, procompetitive operation in an area already dominated by a large independent bank and offices of several large Cleveland-based banks.

The financial and managerial resources of both banks are such that satisfactory operations of Banc-

Ohio after consummation of the proposal will not be impaired. The future prospects of the resulting bank appear favorable, as does its ability to serve the convenience and needs of the community by providing enhanced competitiveness in the area.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities, reveals no evidence that the applicants' overall records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the proposed merger.
June 10, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have an adverse effect upon competition.

* * *

THE FIRST NATIONAL BANK OF MARYLAND, Baltimore, Md., and The First National Bank and Trust Company of Western Maryland, Cumberland, Md.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
The First National Bank and Trust Company of Western Maryland, Cumberland, Md. (381), with	$ 119,221,000	7	
and The First National Bank of Maryland, Baltimore, Md. (1413), which had	2,479,637,000	95	
merged September 4, 1981, under the charter and title of the latter bank (1413). The merged bank at date of merger had	2,598,793,000		102

COMPTROLLER'S DECISION

On April 24, 1981, an application to merge The First National Bank and Trust Company of Western Maryland, Cumberland, Md. (Western Bank), into The First National Bank of Maryland, Baltimore, Md. (FNB), under the charter and title of "The First National Bank of Maryland," was filed with this Office. The application is based on an agreement executed by Western Bank and FNB, dated April 14, 1981.

FNB held total deposits of $1.4 billion as of December 31, 1980, and operated 111 offices in Baltimore and in 13 counties throughout central and eastern Maryland. On that date, FNB was the third largest banking organization in the state.

Western Bank held total deposits of $101 million as of December 31, 1980, and operated eight offices, all in Allegany County, which is located in the extreme western portion of Maryland.

FNB and Western Bank do not compete with one another. The main offices of the two institutions are about 140 miles apart, and their closest offices are approximately 40 miles apart. FNB has two offices in Hancock, Md., which is approximately 40 miles east of Cumberland, where the main office of Western Bank is located. While those communities are in adjacent counties, they are separated by rugged and sparsely populated terrain characterized primarily by a state forest and a wildlife management area.

Applicants analyzed 100 percent of the demand and savings deposits of Western Bank and found that 83 percent originated from Allegany County and more than 71 percent from within an area associated with Cumberland. On December 31, 1979, FNB held an amount, identified from Allegany County ZIP codes, equal to approximately .13 percent of the total deposits of commercial banks in Allegany County.

In addition to Western Bank, there are six commercial banking institutions operating in Allegany County. All are local with the exception of Fidelity Bank, which is an affiliate of Mercantile Bancshares Corporation. There are also two savings and loan associations with offices in Allegany County, one of which holds county deposits in excess of Western Bank, which itself is the largest commercial bank in the county, holding approximately 35 percent of county deposits. The environment for financial institutions in Allegany County is competitive and will remain competitive if this merger is consummated.

We find the financial and managerial resources of FNB and Western Bank to be satisfactory, and the future prospects of both are favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, are less than satisfactory.

We have carefully considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.
July 30, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not be significantly adverse to competition.

* * *

THE FIRST NATIONAL BANK OF ST. JOSEPH,
St. Joseph, Mo., and The First Trust Bank, St. Joseph, Mo.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The First Trust Bank, St. Joseph, Mo., with	$ 32,735,245	1	———
and The First National Bank of St. Joseph, St. Joseph, Mo. (4939), which had	183,483,336	2	———
merged September 8, 1981, under the charter and title of the latter bank (4939). The merged bank at date of merger had	215,162,439	———	3

COMPTROLLER'S DECISION

The First Trust Bank, St. Joseph, Mo., and The First National Bank of St. Joseph, St. Joseph, Mo., are majority-owned and controlled by First Midwest Bancorp., Inc., St. Joseph, a registered bank holding company. This proposed merger is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the merger.

April 22, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The merging banks are both wholly owned subsidiaries of the same bank holding company. As such, their proposed merger is essentially a corporate reorganization and would have no effect on competition.

* * *

MAINE NATIONAL BANK,
Portland, Maine, and The First National Bank of Biddeford, Biddeford, Maine

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
The First National Bank of Biddeford, Biddeford, Maine (1089), with	$ 28,650,000	5	———
was purchased September 18, 1981, by Maine National Bank, Portland, Maine (4128), which had	407,160,000	59	———
After the purchase was effected, the receiving bank had	442,554,000	———	64

COMPTROLLER'S DECISION

On March 10, 1981, an application to purchase the assets and assume the liabilities of The First National Bank of Biddeford, Biddeford, Maine (FNB), by Maine National Bank, Portland, Maine (Maine National), was filed with this Office. The application is based on an agreement executed by FNB and Maine National on Jaunuary 21 1981

Maine National, the purchasing bank, operates 28 offices throughout southern and central Maine. It is the fifth largest commercial banking organization in the state and held total deposits of $335 million as of December 31 1980

FNB operates a total of five offices, all in York County which lies in the extreme southwest corner of the state. Those offices are in Eliot, North Berwick, South Berwick with two in Biddeford Maine National's closest offices are between 4 and 9 miles from FNB offices. As of December 31, 1981, FNB held $25 million in total deposits.

This application raises delicate issues of geographic and product market definition. Geographically, the broad area of concern is the southwest part of Maine and adjoining northeast corner of New Hampshire. That is the area in which the applicants' offices are close enough to provide direct competition. The region is too large and has too many distinct economic centers to be a single banking market. The Federal Reserve Bank of Boston has found that FNB serves three banking markets, and the applicants have suggested five banking markets within the same area. Without attempting to untangle the markets, it can be safely said that the applicants are direct competitors to some degree and assuming, *arguendo*, that the market giving rise to the largest degree of direct competition still does not present a violation of the Bank Merger Act, then the question of market definition need not be determinatively resolved

* Asset figures are as of call dates immediately before and after transaction

In its competitive factor report on this application, the Federal Reserve Bank of Boston notes that Maine National is the second of eight commercial banks in the Portland banking market, with 25.72 percent of market deposits, while FNB is seventh with 2.01 percent. While those figures may be troublesome, they do not take into account the thrift institutions which in Maine hold powers closely parallel to those of commercial banks.* The Federal Reserve Bank notes in its report that from 1976 to 1979 thrift offices in the Portland market grew from 35 to 90 while commercial bank offices remained stagnant at 61. During the same time, the composition of comercial bank's individual partnership and corporate deposits shifted from demand to time and saving where thrifts offer particularly strong competition. Within the Portland banking market, there are serveral larger thrifts and mutual savings banks among which are Maine Savings Bank (total deposits of $422 million), Portland Savings Bank (total deposits of $229 million) and Sun Savings and Loan (total deposits of $113 million).† While the Boston Reserve Bank does not give a precise figure for a revised market sharing including those institutions, it does conclude that the addition of the thrifts reduces the effect of the proposed transaction from substantially adverse to adverse

This Office concurs in the Boston Reserve Bank's reasoning regarding the effect of thrifts on the application. However, we do not feel that the Portland banking market is appropriate for analysis of this merger. FNB is too small and too far (9 miles) from Maine National's nearest Portland office to be a significant competitor to Maine National in Portland ‡ Furthermore, there are intervening offices of other commercial banks and thrifts between applicants' nearest offices Nevetheless, the banks are direct competitors to some extent in various localities in southwestern Maine However, giving due account to the thrift competition, the combine share in any market probably does not exceed 15 to 20 percent of total deposits. Furthermore, there are a large number of thrifts and commercial bank offices within easy reach of any office of FNB, the bank to be acquired. Under those circumstances, the OCC does not believe that this purchase and assumption would violate the Bank Merger Act.

We find the financial and managerial resources of Maine National and FNB to be satisfactory. The future prospects of applicant banks are considered favorable; however, FNB is having difficulty with management succession and is struggling to compete with larger banks and financial institutions. Those problems typify many smaller banks in today's volatile banking environment.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, are less than satisfactory.

We have carefully considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and have concluded that the proposed merger will not violate that act. Accordingly, the application is approved.

June 25, 1981

The Attorney General's report was not received.

* For a more thorough discussion of the banking structure in Maine and the impact of savings and loans and mutual savings banks on the question of product definition, see our opinion on the application to merge Merchants National Bank of Bangor, Bangor, Maine, into Northern National Bank Presque Isle, Maine, especially footnoote 12 therein

† Deposit figures are as of June 30 1980

‡ Indeed, the Reserve Bank of Boston recognizes the low level of competition between those two institutions in its Portland banking market by noting the distance between offices, the fact of intervening banking and thrift offices and the dissimilar nature of banking services offered between the institutions

* * *

THE STATE NATIONAL BANK OF CONNECTICUT, Bridgeport, Conn., and Community Banking Company, North Branford, Conn.

Names of banks and type of transaction	Total assets *	Banking offices: In operation	Banking offices: To be operated
Community Banking Company, North Branford, Conn., with	$ 68,219,000	10	———
and The State National Bank of Connecticut, Bridgeport, Conn. (4), which had	760,033,000	44	———
merged September 28, 1981, under charter and title of the latter (4). The merged bank at date of merger had	817,563,000	———	54

COMPTROLLER'S DECISION

On May 12, 1981, an application to merge Community Banking Company, North Branford, Conn. (Community Bank), into The State National Bank of Connecticut, Bridgeport, Conn. (State National), under the charter and with the title of "The State National Bank of Connecticut," was filed with this Office The application is based on an agreement finalized between Community and State National on April 28, 1981

As of December 31, 1980, State National, a subsidiary of State National Bancorp, Inc., Stamford, Conn., a

* Asset figures are as of call dates immediately before and after transaction

bank holding company with no other banking affiliates, held total domestic deposits of $637.4 million in 44 offices in 20 towns in of the southwestern quadrant of Connecticut. As of the same date, Community Bank, an independent bank, held total deposits of $58.9 million in 10 offices in nine towns in the southeastern quadrant of Connecticut.

The proponents operate in essentially separate banking areas, with only insignificant competitive overlap in evidence. State National operates in and draws the bulk of its business from the southwestern portion of the state, to the west and northwest of the New Haven area where the inconsequential overlap mentioned above exists. State National operates only one office in that area, in Wallingford to the north of New Haven, through which it derives only a nominal volume of deposits from the areas served directly by Community Bank. Community Bank has no offices in the area served by State National but operates in, and draws the bulk of its business from, an area eastward from New Haven. Community Bank derives less than 1 percent of its deposits from Wallingford and other areas served directly by State National. Consequently, consummation of the proposal will not lessen direct competition between the proponents, since they do not currently compete to any significant degree.

In addition to the offices of Community Bank, six major Connecticut commercial banks operate 14 offices in the area served by Community Bank. Community Bank is, nonetheless, the largest commercial bank in the area, with 27.2 percent of its commercial bank deposits. However, the area is also served by numerous offices of mutual savings banks and savings and loan associations. While State National could enter portions of the area served by Community Bank through *de novo* offices, the presence of numerous existing competitor financial institutions makes that proposal the most effective and efficient method of establishing State National as a direct competitor.

We find the financial and managerial resources of State National and Community Bank to be satisfactory and the future prospects of both the existing and proposed institutions to be favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, is less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

August 25, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed the proposed transaction and conclude that it would not have an adverse effect on competition.

* * *

CANAL NATIONAL BANK,
Portland, Me., and Norway National Bank, Norway, Me.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
Norway National Bank, Norway, Me. (13740), with	$ 26,895,000	3	
and Canal National Bank, Portland, Me. (941), which had	241,592,000	28	
merged September 30, 1981, under charter and title of the latter. The merged bank at date of merger had	268,487,000		31

COMPTROLLER'S DECISION

Canal National Bank, Portland, Me., and Norway National Bank, Norway, Me. are majority-owned and controlled by Canal Corporation, Portland, a registered bank holding company. This proposed merger is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the merger.

July 21, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a substantial competitive effect.

* * *

SOUTHEAST FIRST NATIONAL BANK OF MIAMI,
Miami, Fla., and Community Bank of Pinellas, Seminole, Fla.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Community Bank of Pinellas, Seminole, Fla. with	$ 303,157,573	18	———
and Southeast First National Bank of Miami, Miami, Fla. (15638), which had	3,595,031,494	12	———
merged September 30, 1981, under charter and title of the latter bank (15638). The merged bank at date of merger had	3,885,439,067	———	30

COMPTROLLER'S DECISION

After due consideration of all of the factors, the Comptroller of the Currency approved this transaction. A formal decision enumerating the factors considered will be available at a later date.

SUMMARY OF REPORT BY ATTORNEY GENERAL

As stated in our letter of April 2, 1981, we have reviewed this proposed transaction and conclude that it would have no effect on competition.

* * *

BARNETT BANK OF CLEARWATER, NATIONAL ASSOCIATION,
Clearwater, Fla., and Barnett Bank of St. Petersburg, National Association, St. Petersburg, Fla.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Barnett Bank of St. Petersburg, National Association, St. Petersburg, Fla. (14714), with	$ 84,664,000	6	———
and Barnett Bank of Clearwater, National Association, Clearwater, Fla. (14758), which had	91,067,000	3	———
consolidated October 1, 1981, under charter of the former (14714) and with the title "Barnett Bank of Pinellas County, National Association," with headquarters in Clearwater. The consolidated bank at date of consolidation had	175,674,000	———	9

COMPTROLLER'S DECISION

Barnett Bank of Clearwater, National Association, Clearwater, Fla., and Barnett Bank of St. Petersburg, National Association, St. Petersburg, Fla., are majority-owned and controlled by Barnett Banks of Florida, Inc., a registered bank holding company. This proposed consolidation is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the consolidation.
August 10, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The consolidating banks are both wholly owned subsidiaries of the same bank holding company. As such, their proposed consolidation is essentially a corporate reorganization and would have no effect on competition.

* * *

FIRST CITIZENS NATIONAL BANK,
Tupelo, Miss., and One Branch of First Mississippi Bank of Commerce, Walnut, Miss.

Names of banks and type of transaction	*Total assets**	*Banking offices*	
		In operation	*To be operated*
One Branch of First Mississippi Bank of Commerce, Walnut, Miss. with	$ 8,434,000	1	
was purchased October 1, 1981, by First Citizens National Bank, Tupelo, Miss. (15479), which had	130,242,000	11	
After the purchase was effected, the receiving bank had			12

COMPTROLLER'S DECISION

On June 22, 1981, an application was filed by First Citizens National Bank, Tupelo, Miss. (First Citizens), for authorization to purchase certain of the assets and assume certain of the liabilities of the Booneville, Prentiss County, Mississippi branch (subject branch) of the First Mississippi Bank of Commerce, Walnut, Miss. (First Mississippi). The application is based on an agreement finalized between First Citizens and First Mississippi on April 22, 1981.

As of March 31, 1981, First Citizens, an independent bank, held deposits of $113.7 million in 11 offices in northeastern Mississippi. First Citizens is the smallest of the three commercial banks headquartered in Tupelo, operating offices in Tupelo, Verona, Belmont, Okolona, Tishomingo and Fulton. It operates no offices in Prentiss County. First Mississippi, also an independent bank, held total deposits, as of June 30, 1980, of $6.2 million in three banking offices. The subject branch is the only First Mississippi office in Prentiss County; as of September 30, 1980, it held total deposits of approximately $1.4 million.

The application does not provide detailed information delineating the sources of the subject branch's deposit base. However, because of the rural nature of Prentiss County and the availability of other banking and financial facilities in the Booneville area, it is assumed that the bulk of those deposits originate in an area closely contiguous to Booneville. The subject branch is the smallest of the six offices of three commercial banks operating in the Booneville area, controlling only 2.2 percent of area commercial bank deposits. The closest office of First Citizens to the subject branch is in Tishomingo, Miss., approximately 21 miles to the east. No information is provided on the volume of deposits from the Booneville area currently held by First Citizens, but due to the intervening distances between existing offices of First Citizens and Booneville and the availability of alternative financial institutions in the intervening areas, little direct competition between First Citizens and the subject branch is likely. Consequently, consummation of this proposal is not expected to have a perceptible effect on competition in the Booneville area.

We find the financial and managerial resources of First Citizens to be satisfactory and the future prospects after consummation of this proposal to be favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that First Citizens' record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

August 28, 1981

The Attorney General's report was not received.

* Assets are of whole bank as of September 30, 1981, report of condition. Information as of date of consummation was not available at press time

* * *

FIRST NATIONAL BANK OF HOLMES COUNTY,
Lexington, Miss., and Merchants and Planters Bank, Tchula, Miss.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
Merchants and Planters Bank, Tchula, Miss., with	$ 8,908,000	1	
and First National Bank of Holmes County, Lexington, Miss. (13313), which had	41,878,000	3	
merged October 1, 1981, under charter and title of the latter (13313). The merged bank at date of merger had	49,817,000		4

COMPTROLLER'S DECISION

An application was filed on August 15, 1980, with the OCC for approval to merge Merchants & Planters Bank, Tchula, Miss. (Merchants) and the First National Bank of Holmes County, Lexington, Miss. (FNB), under the charter and title of the latter. This application is based on a written agreement executed by the banks on April 16, 1980.

Merchants, the bank to be acquired, was established in 1904 and operates no branches. It is an inde

pendent bank and held total deposits of $8.1 million as of June 30, 1980. It is in Tchula, which has a population of approximately 1,800 and is located in the western portion of Holmes County.

FNB is also an independent bank which held total deposits of $33 million as of June 30, 1980. FNB operates three offices. Its main office is in Lexington, the county seat; the estimated population of Lexington is 2,800. It is located in the central portion of Holmes County, about 10 miles from Tchula. The branches are in Pickens and Durant, which are very small communities on the eastern edge of the county.

Applicants are not in direct competition to any significant degree. They operate in and derive the bulk of their deposits from separate geographic areas. The closest offices are the main office of FNB and the sole office of Merchants. The main office of FNB derives 13.2 percent of its total deposits from the service area of Merchants. However, 28 percent of this volume is derived from three large depositors, including one of FNB's directors and one of its other shareholders. Applicants state that FNB's branches in Pickens and Durant derive no accounts from the service area of Merchants. The area separating the closest offices is rural with minimal population. Holmes County has an agriculturally based economy. The application indicates that it is one of the poorest counties in the state. Under those conditions, the creation of a larger stronger bank may well be procompetitive. Two independent banks will remain in Holmes County, and the possibility of branching remains open to the state's larger financial institutions located in Jackson, Miss.

The financial and managerial resources of both banks are satisfactory; however, the future prospects are clouded by the institutions' small size and the poor local economy. Those prospects are enhanced by a combination of the banks.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that FNB's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This Office has carefully considered the application and has concluded that the proposed merger will not violate the Bank Merger Act, 12 USC 1828(c). Accordingly, the application is approved.

September 15, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

Holmes County, in which both banks are located, is approximately 50 miles north of Jackson. Its population in 1960 was 27,100, and in 1978 was estimated at 22,100. Forecasts of the county's population predict almost no growth, and the Corps of Engineers forecasts a decline in 40 years. The county is roughly rectangular in shape; Tchula is located in the western part of the county; Lexington is 11 miles east in the center of the county; and Pickens and Durant are located in the eastern part of the county.

There are four banks in Holmes County. As of June 30, 1979, Applicant was the largest with $29.9 million, equal to 44.7 percent of total county deposits; the second largest bank had $20.2 million, equal to 30.2 percent of total county deposits; the third largest bank had $9.9 million in deposits, equal to 14.9 percent of total county deposits; and Bank was the smallest with deposits of $6.6 million, equal to 10.2 percent of total county deposits.

If the proposed merger is consummated, the resulting bank would control approximately 55 percent of deposits in Holmes County, and the number of banking alternatives there would be reduced from four to three.

We conclude that the proposed merger would have a significantly adverse effect on competition.

* * *

GREAT SOUTHERN NATIONAL BANK,
Quitman, Miss., and Bank of Jackson, N.A., Jackson, Miss., and Bank of Hattiesburg, Hattiesburg, Miss.

Names of banks and type of transaction	*Total assets**	*Banking offices*	
		In operation	*To be operated*
Bank of Jackson, N.A., Jackson, Miss. (16810), with	$50,669,000	4	
and Bank of Hattiesburg, Hattiesburg, Miss., with	30,497,000	3	
were purchased October 1, 1981, by Great Southern National Bank, Quitman, Miss. (17038), which had	78,195,000	7	
After the purchase was effected, the receiving bank had			14

COMPTROLLER'S DECISION

On June 24, 1981, an application to purchase the assets and assume the liabilities of Bank of Jackson, N.A., Jackson, Miss. (Jackson Bank) and Bank of Hattiesburg, Hattiesburg, Miss. (Hattiesburg Bank), by Great Southern National Bank, Quitman, Miss., was filed with this Office. This Office granted preliminary approval on June 15, 1981, to Bank of Quitman, Quitman, to convert to a national banking association with the title of Great Southern National Bank (Great Southern). The conversion to Great Southern was effective June 24, 1981. The subject purchase and assumption

* Assets are of whole bank as of September 30, 1981 report of condition. Information as of date of consummation was not available at press time.

application is based on two agreements executed on December 11, 1980, by Bank of Quitman with Jackson Bank and Hattiesburg Bank.

Great Southern, the purchasing bank, operates seven offices in the adjacent counties of Clarke, Wayne and Lauderdale. As of December 31, 1980, it held total deposits of $64.7 million.

Jackson Bank operates four offices in Hinds County and, as of December 31, 1980, held total deposits of $30.2 million. Hattiesburg Bank operates three offices in Forrest County and, as of December 31, 1980, held total deposits of $22.3 million.

Great Southern, Jackson Bank and Hattiesburg Bank are not direct competitors. They operate in and derive the bulk of their deposits from separate and distinct service areas. There is no geographic and little, if any, customer overlap between the primary service areas of the proponents. Great Southern's closest office to Jackson Bank is more than 80 miles distant, and its closest office is more than 45 miles distant from Hattiesburg Bank. The closest office of Jackson Bank and Hattiesburg Bank are more than 80 miles apart. In addition, in no instance is the service area (defined by the proponents as the respective county(ies) in which each operates offices) of one of the banks adjacent to the service area of another of the proponents. Since the banks do not compete with one another, this transaction would merely replace Jackson Bank and Hattiesburg Bank in their respective market with Great Southern. Neither the number of competitors nor the concentration of deposits would be changed in any of the three markets. In fact, consummation of this transaction would have a procompetitive effect in each market by replacing two comparatively weak competitors with a stronger institution.† The resulting bank should provide more effective and substantive competition.‡

Great Southern would be permitted to enter both markets with *de novo* offices under state law. However, for the reasons stated above, the proposed purchases and assumptions appear to be more efficient means of expansion by Great Southern into the areas.

The financial and managerial resources of the three banks are considered satisfactory. After the consummation of the proposed merger, the resulting bank's financial and managerial resources will provide a sound basis for future operations. The future prospects of the resulting bank appear favorable, as does its ability to effectively enhance its competitiveness in the market.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities, reveals no evidence that the applicants' records of helping to meet the credit needs of their entire communities are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the proposed transaction.

August 17, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed the proposed transaction and conclude that it would not have a substantial competitive impact.

† Jackson Bank holds less than 2 percent of market deposits. Hattiesburg Bank is the smallest of the four commercial banks in its market with approximately 10 percent of market deposits. Both markets are dominated by the two largest commercial banks in the state.

‡ It is also noted that Great Southern and Jackson Bank have common controlling ownership, thereby further minimizing the competitive effects of that transaction.

* * *

MIDLANTIC NATIONAL BANK/SOUTH,
Haddonfield, N.J., and The Burlington County National Bank, Medford, N.J.

Names of banks and type of transaction	Total assets*	Banking offices: In operation	Banking offices: To be operated
The Burlington County National Bank, Medford, N.J. (1191), with	$ 74,646,000	8	
and Midlantic National Bank/South, Haddonfield, N.J. (14457), which had	341,147,000	15	
merged October 1, 1981, under charter and title of the latter bank (14457). The merged bank at date of merger had			23

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

COMPTROLLER'S DECISION

On June 22, 1981, an application to merge The Burlington County National Bank, Medford, N.J. (BCNB), into Midlantic National Bank/South, Haddonfield, N.J. (Midlantic/South), under the charter and title of Midlantic/South, was filed with this Office. The application is based on an agreement executed between Midlantic/South and BCNB on May 12, 1981.

As of March 31, 1981, Midlantic/South, an affiliate of Midlantic Banks, Inc., West Orange, N.J. (MBI), a multibank holding company, operating throughout New Jersey, held total deposits of $298.4 million in 16

offices in northern Burlington, Camden, Gloucester and Salem counties. As of the same date, BCNB, an independent bank, held total deposits of $58.6 million in eight offices, all in Burlington County, which is in the south central portion of New Jersey.

The areas from which Midlantic/South and BCNB derive the bulk of their deposit business are contiguous, but overlap only nominally. BCNB derives the bulk of its deposits (approximately 90 percent) from the six townships directly adjacent to its head office location, all in Burlington County. BCNB, the largest of the six commercial banks operating the 17 banking offices in that area, holds almost 36 percent of area commercial bank deposits. The area is also served by numerous offices of savings and loan associations. Midlantic/South operates only one office in Burlington County, almost 10 miles from the nearest office of BCNB, and not within the area from which BCNB derives the bulk of its business; the closest offices of Midlantic/South and BCNB are 6.7 miles distant. Midlantic/South derives less than 3 percent of its deposits from the area from which BCNB derives the bulk of its business. The entire MBI system, including Midlantic/South, holds only $2.4 million in deposits from that area, representing only 1.6 percent of total area commercial bank deposits and less than 1 percent of total MBI system deposits. Midlantic/South could enter the area through *de novo* offices but, because of the already-existing numerous competitors in the market, finds the subject proposal to be the most efficient and effective means of establishing itself as a viable competitor. The environment for financial institutions in Burlington County is competitive and will remain competitive if this merger is consummated.

We find the financial and managerial resources of Midlantic/South and BCNB to be satisfactory and the future prospects of both the existing and resulting banks to be favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' record of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, is less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

August 27, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

THE NATIONAL BANK OF SUSSEX COUNTY, Branchville, N.J., and Two Branches of Garden State National Bank, Paramus, N.J.

Names of banks and type of transaction	*Total assets**	*Banking offices: In operation*	*Banking offices: To be operated*
Two Branches of Garden State National Bank, Paramus, N.J. (15570), with	$827,585,000	34	
was purchased October 1, 1981, by The National Bank of Sussex County, Branchville, N.J. (13855), which had	70,900,000	5	
After the purchase was effected, the receiving bank had			7

COMPTROLLER'S DECISION

On April 8, 1981, application was filed by The National Bank of Sussex County, Branchville, N.J. (NBSC), for authorization to purchase certain of the assets and assume certain of the liabilities of two branches of Garden State National Bank, Paramus, N.J. (Garden State). The two branches involved are at 330 Main St., Ogdensburg, N.J., and at the junction of Routes 15 and 94, Lafayette, N.J. (Ogdensburg Branch and Lafayette Branch, respectively). The application is based on an agreement finalized between NBSC and Garden State on January 12, 1981. As a condition of its approval of the acquisition of Garden State by Fidelity Union Bancorporation, Newark, N.J., a bank holding company, the Board of Governors of the Federal Reserve System required Garden State to divest certain of its existing branches. Consummation of this proposal would satisfy, in part, that condition.

As of December 31, 1980, NBSC, an independent bank, held total deposits of $63.7 million in five offices, all in Sussex County which is in north central New Jersey. As of the same date, the Ogdensburg Branch held total deposits of $3.2 million, and the Lafayette Branch held deposits of $2.7 million; both subject branches are in Sussex County.

NBSC ranks third among the nine commercial banks operating 32 offices in Sussex County, the area from which NBSC derives the bulk of its business. NBSC

* Assets are of whole bank as of September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

holds approximately 16 percent of commercial bank deposits in the county. Garden State currently operates four branches, including the two subject branches, in Sussex County and, should the proposal be consummated, will continue to operate the two remaining branches there. Subsequent to the consummation of this proposal, NBSC would still rank third among the locally competing banks, with its share of area commercial bank deposits increased only slightly to 17.6 percent. Consequently, the number of competitors and banking offices in the county will remain constant, as will the relative ranking of all competitors.

The two subject branches operate in separate, but contiguous areas, both serving the area closely associated with their geographic locations. However, only the area served by the Lafayette Branch is contiguous to the area now served directly by NBSC. NBSC does not operate offices in the area served directly by either of the subject branches; each of those areas is, however, currently served by offices of two other commercial banks in addition to the subject branches of Garden State. As such, consummation of the proposal would merely replace the offices of Garden State with offices of NBSC. Because of the already existing offices of other banks and financial institutions in those areas and their limited population and potential for economic growth, NBSC finds it impractical to establish *de novo* offices there. Nonetheless, the environment for financial institutions in the area is competitive and will remain competitive if the proposal is consummated.

We find that the financial and managerial resources of NBSC are satisfactory and its future prospects are favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that NBSC's record of helping to meet the credit needs of its community, including low and moderate income neighborhoods, is less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

August 28, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed the proposed transaction and conclude that it would have no significant effect on competition.

* * *

THE MERCHANTS NATIONAL BANK OF MOBILE,
Mobile, Ala., and First Alabama Bank of Mobile County, National Association, Bayou La Batre, Ala.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The Merchants National Bank of Mobile, Mobile, Ala. (13097), with	$539,988,000	15	
and First Alabama Bank of Mobile County, National Association, Bayou La Batre, Ala. (17016), which had	23,560,000	5	
merged October 28, 1981, under charter of the latter and title of the former, with headquarters in Mobile. The merged bank at date of merger had	563,548,000		20

COMPTROLLER'S DECISION

After due consideration of all of the factors, the Comptroller of the Currency approved this transaction. A formal decision enumerating the factors considered will be available at a later date.

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have also been advised that on June 20, 1981, the merging parties entered into an agreement to divest three of their branches in the Mobile market to a newly organized bank subsidiary of Southland Corporation. Based on our current information and the assumption that a divestiture of at least the three specified branches will in fact be effectuated, the merger would not have a significantly adverse effect on competition.

* * *

FIRST NATIONAL STATE BANK—EDISON,
South Plainfield, N.J., and Five Branches of First National State Bank of South Jersey, Trenton, N.J.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Five Branches of First National State Bank of South Jersey, Moorestown, N.J. (13039), with	$762,176,000	44	
were purchased October 30, 1981, by First National State Bank—Edison, Woodbridge Township, N.J. (15845), with	312,360,000	24	
After the purchase was effected, the receiving bank had			29

COMPTROLLER'S DECISION

On May 15, 1981, an application was filed by First National State Bank—Edison, South Plainfield, N.J. (Edison), for authority to purchase certain of the assets and assume certain of the liabilities of five branch offices (subject branches) of First National State Bank of South Jersey, Trenton, N.J. (South Jersey). The subject branches are located, as follows: 891 Brunswick Ave., 44 West State St., and 1331 Chambers St., Trenton; 2673 Main St., Lawrenceville; and Clover Mall, Quaker Bridge Rd., Hamilton Township, Mercer County, New Jersey. The application is based on an agreement finalized between Edison and South Jersey on April 14, 1981.

As of March 31, 1981, Edison held total deposits of $261.8 million in 24 offices in Middlesex, Monmouth, Ocean and Mercer counties. As of June 30, 1980, the five subject branches, all in Mercer County, held total deposits of $91.7 million.

Both Edison and South Jersey are majority-owned and controlled by First National State Bancorporation, Newark, N.J., a registered bank holding company. As such, this proposed purchase of assets and assumption of liabilities is merely a corporate reorganization which would have no effect on competition.

We find the financial and managerial resources of Edison to be satisfactory and its future prospects to be favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that Edison's record of helping to meet the credit needs of its community, including low and moderate income neighborhoods, is less than satisfactory.

We have considered this application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

September 10, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The merging banks are both wholly owned subsidiaries of the same bank holding company. As such, their proposed merger is essentially a corporate reorganization and would have no effect on competition.

* Assets are of whole bank as of September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

* * *

CENTURY NATIONAL BANK OF PENSACOLA,
Pensacola, Fla., and Century National Bank of Santa Rosa, Milton, Fla., and Century Bank of Gulf Breeze, Gulf Breeze, Fla.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Century National Bank of Santa Rosa, Milton, Fla. (13968), with	$ 42,172,359	3	
and Century Bank of Gulf Breeze, Gulf Breeze, Fla., with	19,232,397	1	
and Century National Bank of Pensacola, Pensacola, Fla. (14909), which had	56,880,183	3	
merged November 1, 1981, under charter of the latter and with the title "Century National Bank of West Florida." The merged bank at date of merger had	116,776,749		7

COMPTROLLER'S DECISION

Century National Bank of Santa Rosa, Milton, Fla., Century Bank of Gulf Breeze, Gulf Breeze, Fla., and Century National Bank of Pensacola, Pensacola, Fla., are majority-owned and controlled by Century Banks, Inc., a registered bank holding company. This proposed merger is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources

and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reasons why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' record of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, is less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the merger.
October 2, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

FIRST UNION NATIONAL BANK OF NORTH CAROLINA, Charlotte, N.C., and First National Bank of Catawba County, Hickory, N.C.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
First National Bank of Catawba County, Hickory, N.C. (4597), with	$ 341,409,000	24	———
and First Union National Bank of North Carolina, Charlotte, N.C. (15650), which had	4,305,321,000	184	———
merged November 1, 1981, under charter and with title of the latter (15650). The merged bank at date of merger had	4,646,730,000	———	202

COMPTROLLER'S DECISION

This application was accepted for filing on July 1, 1981, and is based on an agreement executed by the proponent banks on December 17, 1980. As of December 31, 1980, First Union National Bank of North Carolina, Charlotte, N.C. (First Union), held $2.3 billion in deposits and, as of June 30, 1980, First National Bank of Catawba County, Hickory, N.C. (Catawba Bank), held $288 million in deposits. Catawba Bank has 23 offices in Alexander, Burke, Catawba, Lincoln, Ashe, Buncombe, Haywood, Henderson and Transylvania counties. First Union operates 183 offices in 44 counties in widely separated geographical regions throughout North Carolina.

The relevant geographic markets in which the competitive effects of the merger must be measured are the markets in which Catawba Bank, the bank to be acquired, operates. Catawba Bank began business in 1891 in Hickory, located in Catawba County. Until 1978, it operated branches only in Catawba County and the surrounding counties of Alexander and Lincoln. At present, it draws significant business from those counties and from Burke County, another county contiguous to Catawba.

The application states that the four counties of Alexander, Burke, Catawba and Lincoln constitute a separate market denominated the Hickory market. It further states that Catawba Bank draws 84 percent of its total deposits from that market. Applicants go to considerable effort to document their position that those four counties comprise a distinct market. The Office concurs in the applicants' conclusion which is not controverted by the Federal Reserve Bank of Richmond in its letter commenting on the competitive aspects of the merger.† First Union has no offices and very few deposits in the Hickory market. Accordingly, there is virtually no direct competition between the proponents in that market. The merger would not, therefore, reduce existing competition but would merely substitute First Union for Catawba Bank.

In 1978, Catawba Bank acquired a small two-office bank in Ashe County, an isolated rural county in the northwest portion of the state. That county forms a distinct market in which First Union has no appreciable presence. The merger will not affect competition in that market, but again merely effects a substitution of competitors.

In 1979, Catawba Bank purchased Western Bank and Trust Company which had branches in four adjacent counties in southwest North Carolina: Buncombe, Haywood, Henderson and Transylvania. First Union also has branches in each of those counties. The effect of this merger will be greatest in those counties.

Applicants argue strongly that those four counties comprise a single market. The dominance of Asheville in terms of population, finance, industry and retail sales is cited in support of that position. Additionally, applicants note that Asheville is at the intersection of the two interstate highways serving the entire region and that the mountainous terrain contributes to the existence of a four county banking market. The Federal Reserve Bank of Richmond suggests that each county

† As of the date of this decision, the Comptroller has received a competitive factor report only from the Federal Reserve Bank of Richmond.

(counting the Asheville Rand McNally area as a county) is a separate banking market. This Office found in Catawba Bank's application to acquire Western Bank and Trust that the four-county area was the appropriate market.†† Whichever market definition is adopted, the conclusion is inevitable that First Union is a significant competitor. It holds 27 percent of the commercial bank deposits in the four-county market and its shares in the individual county markets vary from 21.8 to 62.6 percent using December 30, 1980, figures. The addition of Catawba Bank raises those shares to 29 and 68.2 percent, respectively. Conventional commercial bank deposit share analysis would find those market shares troublesome and even fatal depending on one's choice of market. Applicants, however, suggest a much broader analysis which would take into account thrifts, money market funds and out-of-market banks, as well as consideration of loan activity. Using the applicants' analysis, First Union's four-county deposit market shares drop to 14 percent when thrifts are included and to an estimated 12 percent when all deposit-taking financial institutions are included. When Catawba Bank is added, those shares become 15 and 13 percent, respectively. Further, if savings and loans are included, there will remain 19 deposit-taking institutions in the four-county market after the merger. Among the remaining institutions are Wachovia and North Carolina National Banks which rank as the first and second commercial banks in the state.

Without giving the applicants' thrift and out-of-market deposit figures full mathematical equivalency with deposits held locally,§ the Office nevertheless finds that those factors are of major competitive significance and, on balance, overcome the finding suggested by the more narrow traditional commercial bank deposit market share approach. Accordingly, while some lessening of competition may result; the overall effect of the merger in any market in which Catawba Bank functions would not substantially lessen competition.

We find the financial and managerial resources of Catawba Bank and First Union to be satisfactory. The future prospects of the proponent banks, independently and in combination, are considered favorable.

As a result of this merger, First Union intends to make available new and expanded banking services to the present customers of Catawba Bank, including, but not limited to, variable-rate mortgages, VISA cards, expanded trust services, corporate services, cash management and international services. Those facts are positive considerations with respect to the issue of convenience and needs, and this Office is unaware of any negative factors relating to this issue.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, are less than satisfactory (12 USC 2901 *et seq.*, 12 CFR 25).

We have carefully considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), as well as the report received by this Office from the Federal Reserve Bank of Richmond. We conclude that the proposed merger will not violate the standards found in the Bank Merger Act and will be in the public interest. Accordingly, the application of the Catawba Bank to merge with First Union is approved.

September 30, 1981

†† See decision of the Comptroller of the Currency on the application of First National Bank of Catawba County to purchase the assets and assume the liabilities of Northern Carolina Bank & Trust Company, November 27, 1979.

§ This Office's view on this matter is spelled out in more detail in our decision of the application to merge Merchants National Bank of Bangor, Maine, into Northern National Bank of Presque Isle, Maine, December 12, 1980. See especially footnote 12 therein.

The Attorney General's report was not received.

* * *

BARNETT BANK OF EUSTIS, NATIONAL ASSOCIATION, Eustis, Fla., and Barnett Bank of Mount Dora, Mount Dora, Fla.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
Barnett Bank of Eustis, National Association, Eustis, Fla. (14783), with	$46,929,000	2	
and Barnett Bank of Mount Dora, Mount Dora, Fla., which had.	38,191,000	1	
consolidated November 2, 1981, under charter of the former (14783) and title "Barnett Bank of Lake County, National Association." The consolidated bank at date of consolidation had.	86,512,000		3

COMPTROLLER'S DECISION

Barnett Bank of Eustis, National Association, Eustis, Fla., and Barnett Bank of Mount Dora, Mount Dora, Fla., are majority-owned and controlled by Barnett Banks of Florida, Inc., Jacksonville, Fla., a registered bank holding company. This proposed consolidation is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the com-

munity to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the consolidation.

September 11, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed consolidation is strictly a corporate reorganization and would have no effect on competition.

* * *

BARNETT BANK OF ORLANDO/WINTER PARK, NATIONAL ASSOCIATION, Winter Park, Fla., and Barnett Bank of Brevard County, National Association, Cocoa, Fla., and Barnett Bank of Seminole County, National Association, Altamonte Springs, Fla.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
Barnett Bank of Seminole County, National Association, Altamonte Springs, Fla. (15858), with	$ 75,468,000	3	———
Barnett Bank of Brevard County, National Association, Cocoa, Fla. (13390), with	127,554,000	4	———
and Barnett Bank of Orlando/Winter Park, National Association, Winter Park, Fla. (14767), which had	324,260,000	10	———
consolidated November 2, 1981, under charter of the latter (14767) and with the title "Barnett Bank of Central Florida, National Association." The consolidated bank at date of consolidation had	533,883,000	———	17

COMPTROLLER'S DECISION

Barnett Bank of Seminole County, National Association, Altemonte Springs, Fla., Barnett Bank of Brevard County, National Association, Cocoa, Fla., and Barnett Bank of Orlando/Winter Park, National Association, Winter Park, Fla., are majority-owned and controlled by Barnett Banks of Florida, Inc., a registered bank holding company. This proposed consolidation is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the consolidation.

September 8, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The consolidating banks are all wholly owned subsidiaries of the same bank holding company. As such, their proposed consolidation is essentially a corporate reorganization and would have no effect on competition.

* * *

FIRST COLORADO BANK OF PUEBLO, NATIONAL ASSOCIATION,
Pueblo, Colo., and Midtown National Bank, Pueblo, Colo.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Midtown National Bank, Pueblo, Colo. (15486), with	$10,599,000	1	
was purchased November 2, 1981, by First Colorado Bank of Pueblo, National Association, Pueblo, Colo. (17108), which had	700,000	0	
After the purchase was effected, the receiving bank had			1

COMPTROLLER'S DECISION

On October 30, 1981, application was made to the OCC to grant prior written approval for First Colorado Bank of Pueblo, National Association, Pueblo, Colo. (Assuming Entity), to purchase assets and assume certain liabilities of Midtown National Bank, Pueblo (Midtown). The application rests on an agreement, incorporated herein by reference the same as if fully set forth, negotiated between Assuming Entity and the Federal Deposit Insurance Corporation (FDIC) as receiver of Midtown. For the reasons set forth below, the application is hereby approved, and Assuming Entity is authorized immediately to consummate the purchase and assumption transaction.

Midtown was chartered as a national bank by the OCC in February 1965 and commenced business on March 1, 1965. Midtown reached a problem status in summer 1978, due to inadequate liquidity, poor asset/liability management and a substantial increase in classified assets.

A final examination of Midtown's condition was begun in October 1981. Because of the numerous and severe problems facing Midtown and the continued deterioration in its condition, the Comptroller on October 30, 1981, became satisfied that the bank was insolvent. Pursuant to the provisions of 12 USC 191 and 12 USC 1821(c), he appointed the FDIC receiver. The Comptroller has now been asked to grant his written approval of the proposed agreement negotiated between the FDIC and Assuming Entity by which the latter would purchase the assets and assume certain liabilities, including all deposit liabilities of Midtown.

Under the Bank Merger Act, 12 USC 1828(c), the Comptroller cannot approve a purchase and assumption transaction which would have certain proscribed anticompetitive effects unless he finds those anticompetitive effects to be clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Additionally, the Comptroller is directed to consider the financial and managerial resources and future prospects of the existing and proposed institution and the convenience and needs of the community to be served. When necessary, however, to prevent the evils attendant on the failure of a bank, the Comptroller can dispense with the standards applicable to usual acquisition transactions and need not consider reports on the competitive effects from the consequences of the transaction ordinarily solicited from the Department of Justice and other banking agencies. He is authorized in such circumstances to act immediately in his sole discretion to approve such a transaction and to authorize its immediate consummation.

The proposed acquisition will be in accord with all pertinent provisions of the National Bank Act and will prevent a disruption to the community. The Assuming Entity will have strong financial and managerial resources, and this acquisition will enable it to enhance the banking services offered in the Pueblo community. Thus, the approval of this transaction will help avert a loss of public confidence in the banking system and will improve the services offered to the banking public.

The Comptroller finds that the anticompetitive effects of the proposed transaction, if any, are clearly outweighed in the public interest by the probable effect of the proposed transaction in meeting the convenience and needs of the community to be served. For those reasons, Assuming Entity's application to assume certain liabilities and purchase assets of Midtown as set forth in the agreement is approved. The Comptroller further finds that the failure of Midtown requires him to act immediately, as contemplated by the Bank Merger Act, to prevent disruption of banking services to the community; the Comptroller thus waives publication of notice, dispenses with solicitation of competitive reports from other agencies and authorizes the transaction to be consummated immediately.

November 2, 1981

Due to the emergency nature of the situation, no Attorney General's report was requested.

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

* * *

VIRGINIA NATIONAL BANK,
Norfolk, Va., and Old Colony Bank and Trust Company of Williamsburg, Williamsburg, Va.

Names of banks and type of transaction	*Total assets**	*Banking offices*	
		In operation	*To be operated*
Old Colony Bank and Trust Company of Williamsburg, Williamsburg, Va., with	$ 20,017,000	3	———
and Virginia National Bank, Norfolk, Va. (9885), which had	3,041,395,000	154	———
merged November 13, 1981, under charter and with title of the latter bank (9885). The merged bank at date of merger had		———	157

COMPTROLLER'S DECISION

On May 15, 1981, application was made for permission to merge Old Colony Bank and Trust Company of Williamsburg, Williamsburg, Va. (Old Colony), into Virginia National Bank, Norfolk, Va. (Virginia National). The application is based on an agreement finalized between Virginia National and Old Colony on March 11, 1981.

As of December 31, 1980, Virginia National, the principal subsidiary of Virginia National Bancshares, Inc., Norfolk (Bancshares), was the second largest commercial bank in Virginia, holding total domestic deposits of almost $2.2 billion. It operated 181 banking offices throughout the state.

As of the same date, Old Colony, an independent bank, held total deposits of $15.9 million and operated through three offices, all in, or directly adjacent to, Williamsburg.

The relevant banking market of Old Colony is Williamsburg, contiguous James City County and the northern portion of York County, from which it derives the bulk of its deposits. Old Colony is the second largest of the seven commercial banks operating 17 offices in that market, holding approximately 11.5 percent of market deposits; the largest bank controls almost 66 percent of market commercial bank deposits. Old Colony is now the only independent bank in the market.

Virginia National operates no offices within the relevant banking market of Old Colony; the closest offices of Virginia National are in Newport News, Va., 17 miles distant and separated by extensive military installations and rural and park areas. Virginia National currently derives only a nominal volume of deposit business from the area served by Old Colony. Under state law, Virginia National may not establish *de novo* branch offices in the area nor does Bancshares find the establishment of a *de novo* subsidiary bank an efficient method of entering and competing in the market. Merger with an existing bank, therefore, is the only reasonable means for Virginia National to enter the area.

As such, the proposal merely replaces one competitor in the market with another, more substantial competitor. Consequently, consummation of the proposal is expected to have a positive effect on competition in and around the current relevant banking market of Old Colony.

We find that the financial and managerial resources of both Virginia National and Old Colony are satisfactory and the future prospects of both the existing and proposed institutions are favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, are less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

October 8, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a substantial competitive impact.

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

* * *

THE FIRST NATIONAL BANK OF MARYLAND,
Baltimore, Md., and The Denton National Bank, Denton, Md.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
The Denton National Bank, Denton, Md. (2547), with	$ 41,189,000	2	———
and The First National Bank of Maryland, Baltimore, Md. (1413), which had	2,667,862,000	134	———
merged November 16, 1981, under charter and title of the latter. The merged bank at date of merger had	2,706,286,000	———	136

COMPTROLLER'S DECISION

On June 4, 1981, application was made to the OCC for permission to merge The Denton National Bank, Denton, Md. (Denton National), into The First National Bank of Maryland, Baltimore, Md. (First National). The application is based on an agreement finalized between First National and Denton National on February 10, 1981.

As of December 31, 1980, First National, the principal subsidiary of First Maryland Bancorp, Baltimore (First Maryland), was the third largest commercial bank in Maryland, holding total domestic deposits of approximately $1.4 billion in 103 banking offices operating throughout the state; however, the bulk of those offices are in the Baltimore and Washington, D.C., metropolitan areas in central Maryland.

As of the same date, Denton National, an independent bank, held total deposits of $33 million in two banking offices, both in rural Caroline County in eastern Maryland, adjacent to Maryland's border with Delaware.

First National and Denton National do not directly compete with one another. The main offices of the two institutions are 65 miles apart, and their closest offices are approximately 32 miles apart. First National operates no offices in Caroline County and derives only a nominal portion of its deposits from within the county. Less than 4 percent of Denton National's deposits are derived from areas served by First National.

Denton National, which derives in excess of 80 percent of its deposits from Caroline County, primarily from the areas in and adjacent to Denton and Federalsburg, the sites of its two offices, is the largest of the six commercial banks operating nine offices in the county, holding approximately 32.5 percent of county commercial bank deposits. Significant competition is provided by two banks headquartered in Caroline County and from offices of the state's largest bank, based in Baltimore.

The environment for financial institutions in Caroline County is competitive and would remain competitive if this merger is consummated. Consummation of the proposal would actually be procompetitive, as it would replace a competitor in the area with a more substantial financial institution. *De novo* entry into Caroline County is not viewed by First National or First Maryland as the most efficient means to effectively enter the area and compete there.

The financial and managerial resources of both First National and Denton National are satisfactory, and the future prospects of the existing and proposed institutions are favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, is less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and we find that it will not lessen competition. Accordingly, the application is approved.

October 8, 1981

The Attorney General's report was not received.

* * *

COLUMBIA UNION NATIONAL BANK AND TRUST COMPANY,

Kansas City, Mo., and First Union Trust Company in Kansas City, Kansas City, Mo., and New Columbia National Bank, Kansas City, Mo.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Columbia Union National Bank and Trust Company, Kansas City, Mo. (11472), with	$289,932,000	2	
and First Union Trust Company in Kansas City, Kansas City, Mo., with	729,000	1	
and New Columbia National Bank (Organizing), Kansas City, Mo. (11472), with	240,000	0	
consolidated November 20, 1981, under the charter and title of "Columbia Union National Bank and Trust Company." The consolidated bank at date of consolidation had			3

COMPTROLLER'S DECISION

Columbia Union National Bank and Trust Company, Kansas City, Mo., First Union Trust Company in Kansas City, Kansas City, and New Columbia National Bank (Organizing), Kansas City, are controlled by First Union Bancorporation, St. Louis, Mo. a registered bank holding company. Consequently, this proposed consolidation is merely a corporate reorganization which would have no effect on competition

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to the Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the consolidation.

October 15, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* Asset figures are from the September 30, 1981 report of condition Information as of date of consummation was not available at press time

* * *

NATIONAL BANK OF NORTH AMERICA,

New York City, N.Y., and One Branch of Bankers Trust Company, New York City, N.Y.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
One Branch of Bankers Trust Company, New York City, N.Y., with	$35,571,552,000	21	
was purchased November 23, 1981, by National Bank of North America, New York City, N.Y. (7703), with	5,983,117,000	151	
After the purchase was effected, the receiving bank had			152

COMPTROLLER'S DECISION

On August 3, 1981, the National Bank of North America, New York City, N.Y. (NBNA), made application for authority to purchase certain of the assets and assume certain of the liabilities of a branch of Bankers Trust Company, New York City (Bankers Trust), located at 47 Graham Ave., Brooklyn, Kings County, New York (Graham Avenue Office). The application is based on an agreement finalized between NBNA and Bankers Trust on May 28, 1981. That agreement is associated with Bankers Trust's plans to divest certain retail branch operations; sixteen other Bankers Trust branches were acquired by NBNA in 1980.

As of March 31, 1981, NBNA, a subsidiary of National Westminster Bank Limited, London, England, had total deposits of approximately $4.5 billion. NBNA operates through over 150 offices in New York City, Westchester County and on Long Island. As of the same date, Bankers Trust, a subsidiary of Bankers Trust New York Corporation, a bank holding company, had total deposits of $24.6 billion; the Graham Avenue Office held deposits of $10.2 million.

* Asset figures are as of the September 30, 1981 report of condition. Information as of date of consummation was not available at press time.

The Graham Avenue Office is in the Williamsburgh section of Brooklyn. NBNA currently operates its Williamsburgh office at 815 Broadway, approximately five blocks from the subject branch. It is presumed that the subject branch derives the bulk of its deposits from the area in and around the Williamsburgh section in which it operates; currently it is the fifth largest of the six offices of the five banks operating offices within a one-half-mile wide radius of it, holding only 6 percent of deposits in that area. The local NBNA branch is the smallest area banking office, holding only 2 percent of area deposits; banking in the area is dominated by two offices of a savings bank which hold 76 percent of area bank deposits. Consummation of the proposal would result in NBNA becoming the fourth largest, in terms of deposits, of the offices of banks remaining in the area.

Bankers Trust will no longer compete directly in the area; however, four other strong competitors will remain. In addition, the surrounding areas of Brooklyn offer numerous sources of competitive financial alternatives to the public, including another office of Bankers Trust. The environment for financial institutions is competitive and is expected to remain competitive if the proposal is consummated.

We find that the financial and managerial resources of NBNA are satisfactory, and its future prospects are favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that NBNA's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

October 8, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

THE STATE NATIONAL BANK OF CONNECTICUT, Bridgeport, Conn., and Westport National Bank, Westport, Conn.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
Westport National Bank, Westport, Conn. (15363), with	$ 39,537,000	5	
and The State National Bank of Connecticut, Bridgeport, Conn. (4), which had	810,305,000	54	
merged November 23, 1981, under charter and title of the latter bank (4). The merged bank at date of merger had	852,835,000		59

COMPTROLLER'S DECISION

On June 24, 1981, application was made for authorization to merge Westport National Bank, Westport, Conn (Westport National), into The State National Bank of Connecticut, Bridgeport, Conn. (State National). The application is based on an agreement finalized between State National and Westport National on May 5, 1981

As of December 31, 1980, State National, the principal subsidiary of State National Bancorp, Inc. (Bancorp), a bank holding company, was the sixth largest commercial bank in Connecticut, holding total domestic deposits of approximately $637 million in its 44 offices throughout the southern and western portions of the state.

As of the same date, Westport National, an independent bank, held total deposits of almost $35 million in its five offices, all in Westport and in towns adjacent to Westport.

The relevant banking market of Westport National is Westport and the surrounding towns of Norwalk, Weston and Wilton, the area from which it derives the bulk of its deposit business. Within that four-town area, Westport National ranks sixth among the eight commercial banks operating 24 banking offices there, holding only 6.8 percent of area commercial bank deposits. State National operates no offices in Westport, Norwalk and Weston; it does operate two offices in Wilton, but Westport National does not operate an office there (or in Norwalk or Wilton). State National has the smallest share of the deposits of commercial banks operating in the market area of Westport National, holding only 2.2 percent of commercial bank deposits, the resulting bank would rank fifth among the seven remaining banks, with 9 percent of market commercial bank deposits. Under state law, State National may not establish *de novo* offices in Westport or Norwalk. Merger with an existing institution already operating there is its only means of direct entry into that market. The proposed merger will replace one competitor in Westport with another which is financially stronger and consequently, consummation of this pro-

posal is expected to have a procompetitive impact on Westport and the surrounding towns. The environment for the commercial banks and other financial institutions in this part of Fairfield County is currently competitive and is expected to remain competitive after the merger is consummated.

We find that the financial and managerial resources of both State National and Westport National are satisfactory and that the future prospects of both the existing and proposed institutions are favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, are less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that the merger would not lessen competition. Accordingly, the application is approved.

October 15, 1981

The Attorney General's report was not received.

* * *

THE FIRST NATIONAL BANK OF MARYLAND, Baltimore, Md., and The Farmers and Merchants National Bank of Cambridge, Cambridge, Md.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
The Farmers and Merchants National Bank of Cambridge, Cambridge, Md. (5880), which had	$ 23,864,000	2	
and The First National Bank of Maryland, Baltimore, Md. (1413), which had	2,690,608,000	134	
merged November 30, 1981, under the charter and title of the latter. The merged bank at date of merger had	2,707,974,000		136

COMPTROLLER'S DECISION

On June 30, 1981, an application to merge The Farmers and Merchants National Bank of Cambridge, Cambridge, Md. (Cambridge Bank), into The First National Bank of Maryland, Baltimore, Md. (FNB), under the charter and with the title of "The First National Bank of Maryland" was filed with this Office. The application is based on an agreement executed by the applicants on December 16, 1980.

FNB held total deposits of $1.7 billion as of March 31, 1981, and operated 118 offices in Baltimore and in various counties throughout central and eastern Maryland.

Cambridge Bank held total deposits of $19.9 million as of March 31, 1981, and operated its main office and one branch in Cambridge, located in Dorchester County, Maryland, a largely rural county on the eastern shore of the Chesapeake Bay.

FNB and Cambridge Bank do not compete with one another. The main offices of the two institutions are about 74 miles apart and are separated by the Chesapeake Bay. The nearest offices are 32 miles apart. FNB presently operates no offices in Dorchester County, although it has received approval to open a new office in Talbot County and has acquired offices by merger in Caroline County. Notwithstanding the addition of those offices, FNB's nearest office will be no closer than 17 miles from the nearest Cambridge Bank office.

Data submitted by applicants indicate that FNB obtains no significant amount of deposits from Dorchester County and that over 96 percent of Cambridge Bank's deposits originate within the county. Accordingly, this Office concurs with the finding of the Federal Reserve Bank of Richmond that there is no measurable existing competition between the two institutions.

In addition to Cambridge Bank, there are four commercial banks operating in Dorchester County and three offices of savings and loan associations. Additionally, there are two finance companies operating in Dorchester County, both in Cambridge. Thus, the environment for financial institutions and services in Dorchester County is competitive and will remain competitive if this merger is consummated.

We find the financial and managerial resources of FNB and Cambridge Bank to be satisfactory, and the future prospects of both are favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, are less than satisfactory.

We have carefully considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

October 15, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a substantial competitive effect.

FIRST SECURITY BANK OF UTAH, N.A.,
Ogden, Utah, and First Security Bank of Orem, N.A., Orem, Utah, and First Security Bank of Richfield, N.A., Richfield, Utah, and First Security State Bank of American Fork, American Fork, Utah, and First Security State Bank of Helper, Helper, Utah, and First Security State Bank of Kaysville, Kaysville, Utah, and First Security State Bank of Ogden, Ogden Utah, and First Security State Bank of Twelfth Street, Ogden, and First Security Bank of Utah, N.A., Ogden, Utah

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
First Security Bank of Orem, N.A., Orem, Utah (16615), with	$ 8,255,000	1	———
First Security Bank of Richfield, N.A., Richfield, Utah (16813), with	6,595,000	1	———
First Security State Bank of American Fork, American Fork, Utah, with	2,828,000	1	———
First Security State Bank of Helper, Helper, Utah, with	5,573,000	1	———
First Security State Bank of Kaysville, Kaysville, Utah, with	4,912,000	1	———
First Security State Bank of Ogden, Ogden, Utah, with	2,014,000	1	———
First Security State Bank of Twelfth Street, Ogden, Utah, with	2,111,000	1	———
and First Security Bank of Utah, N.A., Ogden, Utah (2597), which had	1,973,440,000	70	———
merged November 30, 1981, under charter and title of the latter bank (2597). The merged bank at date of merger had	1,991,740,000	———	77

COMPTROLLER'S DECISION

First Security Bank of Utah, N.A., Ogden, Utah, First Security Bank of Orem, N.A., Orem, Utah, First Security Bank of Richfield, N.A., Richfield, Utah, First Security State Bank of American Fork, American Fork, Utah, First Security State Bank of Helper, Helper, Utah, First Security State Bank of Kaysville, Kaysville, Utah, First Security State Bank of Ogden, Ogden, and First Security State Bank of Twelfth Street, Ogden, are majority-owned and controlled by First Security Corporation, Salt Lake City, Utah, a registered bank holding company. As such, the proposed merger is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, is less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

October 8, 1981

The Attorney General's report was not received.

* * *

SACRAMENTO VALLEY BANK, NATIONAL ASSOCIATION,
Sacramento, Calif., and Four Branches of American National Bank, Bakersfield, Calif.

Names of banks and type of transaction	*Total assets**	*Banking offices*	
		In operation	*To be operated*
Four Branches of American National Bank, Bakersfield, Calif. (15437), which had	$355,783,000	4	———
were purchased December 4, 1981, by Sacramento Valley Bank, National Association, Sacramento, Calif. (17120), which had	5,000,000	1	———
After the purchase was effected, the receiving bank had		———	5

COMPTROLLER'S DECISION

Sacramento Valley Bank, National Association, Sacramento, Calif., is being organized by Central Pacific Corporation, Bakersfield, Calif., a bank holding company. The proposed purchase of assets and assumption of liabilities by Sacramento Valley Bank, National Association, of four branches of American National Bank, Bakersfield, Calif., is part of a process whereby Sacramento Valley Bank, National Association, will be established as a separate commercial bank, wholly owned by Central Pacific Corporation. Consequently, since the proposed transaction is a vehicle for the es-

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

tablishment of a *de novo* subsidiary commercial bank by a bank holding company, using existing branches of an already-existing subsidiary of that holding company, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of American National Bank and the future prospects of both the existing and resulting banks are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the American National Bank's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

November 3, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the American National Bank would become a subsidiary of Central Pacific Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Central Pacific Corporation, it would have no effect on competition.

* * *

BARNETT BANK OF TAMPA, NATIONAL ASSOCIATION, Tampa, Fla., and Carrollwood State Bank, Tampa, Fla.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
Carrollwood State Bank, Tampa, Fla., with	$ 24,199,000	1	———
and Barnett Bank of Tampa, National Association, Tampa, Fla. (16437), which had	161,483,000	6	———
merged December 7, 1981, under charter and title of the latter bank. The merged bank at date of merger had	175,356,000	———	7

COMPTROLLER'S DECISION

An application was filed on June 6, 1981, pursuant to the Bank Merger Act, 12 USC 1828(c), by Carrollwood State Bank, Tampa, Fla. (Carrollwood Bank), for approval to merge with Barnett Bank of Tampa, National Association, Tampa (Barnett Bank), under the charter and title of Barnett Bank of Tampa, National Association. The application is based on a written agreement executed by the banks on January 20, 1981.

Carrollwood Bank, the bank to be acquired, is a state-chartered bank with a single office in the northwest quadrant of metropolitan Tampa. As of December 31, 1980, Carrollwood Bank held deposits of $19.4 million. The application states that Carrollwood Bank derives approximately 85 percent of its total deposits and 65 percent of its total loans from northwest Tampa.* Barnett Bank held $118.5 million in deposits as of December 30, 1980, and presently operates six offices in the Tampa metropolitan area. Barnett Bank is a wholly owned subsidiary of Barnett Banks of Florida, the second largest holding company in Florida.

*Applicants have described northwest Tampa as that part of metropolitan Tampa which lies west of Interstate 75 and north of Interstate 275. Metropolitan Tampa is defined in the application as an area encompassing the city and certain contiguous urban and suburban areas as shown on the map attached as Appendix I to the application.

The threshold question in determining whether the proposed acquisition will violate the Bank Merger Act is whether Carrollwood Bank and Barnett Bank engage in substantial direct competition. It is apparent from the application that the banks are, indeed, direct competitors. The loss of competition arising from consummation of this proposal will be most significantly felt in Carrollwood Bank's service area in northwest Tampa. Barnett Bank operates two small offices within that area. However, an examination of the competitive situation within the area shows that the loss of the single Carrollwood Bank office would be almost insignificant. Within northwest Tampa, Carrollwood Bank holds approximately 3.9 percent of the deposits of commercial banks. Barnett Bank's two offices hold an additional .9 percent of commercial bank deposits. At year-end 1980, there were 17 commercial banking organizations with 19 offices in northwest Tampa. An additional office opened in 1981, and as of the date of the application, another was awaiting regulatory approval. In addition, there are seven savings and loan associations with 12 offices in the area. The market is competitive, deconcentrated and growing rapidly. Under those circumstances and, in light of the market share data, the Comptroller's Office finds that the proposed merger will not violate the standards of the Bank Merger Act.

We find the financial and managerial resources of Barnett Bank and Carrollwood Bank to be satisfactory

The future prospects of the proponent banks, independently and in combination, are considered favorable. The Office is not aware of any facts which would produce a negative impact on convenience and needs as a result of the merger.

A review of the record of the application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that Barnett Bank's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

We have carefully considered the application pursuant to the Bank Merger Act, as well as the reports received by this Office from the Federal Reserve Bank of Atlanta and the Department of Justice. We conclude that the proposed merger will not violate the Bank Merger Act, will be in the public interest and is therefore approved.

November 6, 1981

The Attorney General's report was not received

* * *

PEOPLES NATIONAL BANK OF WASHINGTON,
Seattle, Wash., and Washington State Bank, Washougal, Wash.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Washington State Bank, Washougal, Wash., which had	$ 20,353,000	3	
was purchased December 10, 1981, by Peoples National Bank, Seattle, Wash. (14394), with	1,592,761,000	87	
After the purchase was effected, the receiving bank had			90

COMPTROLLER'S DECISION

An application was filed July 28, 1981, with the Office of the Comptroller of the Currency pursuant to the Bank Merger Act, 12 USC 1828(c), by Peoples National Bank of Washington, Seattle, Wash. (Peoples Bank), to purchase the assets and assume the liabilities of Washington State Bank, Washougal, Wash. (WSB). This application is based upon a written agreement executed by the banks on June 1, 1981.

WSB, the bank whose assets and liabilities are to be acquired, is a state-chartered bank with three offices in the suburban area of Vancouver, Wash., in the southwest portion of the state. As of December 31, 1980, WSB held deposits of approximately $19 million.

Peoples Bank had total deposits of approximately $1.2 billion as of December 31, 1980, and operates 87 branches throughout the state of Washington.† Peoples Bank operates a single branch in downtown Vancouver.

This application does not present serious competitive issues. Peoples Bank's one office does not meaningfully compete with the three offices operated by WSB. Washington State's restrictive branching law prevents Peoples Bank from expanding its downtown operation into the market area of any of WSB's three offices. There are numerous intervening offices of commercial banks, as well as savings and loans, between Peoples Bank's office and WSB's offices. Both Peoples Bank and WSB are outranked in offices and deposits by SeaFirst and the major independent banks in Vancouver area. Accordingly, the Office of the Comptroller of the Currency concurs with the conclusion of the Department of Justice and the Federal Reserve of San Francisco that this proposal will not significantly affect competition.

We find the financial and managerial resources of Peoples Bank and WSB to be satisfactory. The future prospects of the proponent banks, independently and in combination, are considered favorable. The Office is not aware of any facts which would produce a negative impact on convenience and needs as a result of this merger.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities revealed no evidence that Peoples Bank's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

We have carefully considered the application pursuant to the Bank Merger Act, as well as the reports received by this Office from the Federal Reserve Bank of San Francisco and the Department of Justice. We conclude that the proposed merger will not violate the Bank Merger Act, will be in the public interest, and is therefore approved.

November 6, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

† Washington's branching statute (RCW 30 40 020) restricts *de novo* branching to the city and unincorporated areas of the country in which a bank's main office is located and the only permissible manner in which a branch can be established in an area outside the bank's home county is by acquiring an existing bank or a branch of a bank already operating there.

ZIONS FIRST NATIONAL BANK,
Salt Lake City, Utah, and Zions First National Bank of Orem, Orem, Utah, and Zions First National Bank of Cedar City, Cedar City, Utah

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Zions First National Bank of Cedar City, Cedar City, Utah (16853), with	$ 6,131,000	1	———
and Zions First National Bank of Orem, Orem, Utah (16901), with	5,177,000	1	———
and Zions First National Bank, Salt Lake City, Utah (4341), which had	1,835,083,000	54	———
merged December 10, 1981, under charter and title of the latter. The merged bank at date of merger had	1,846,391,000	———	56

COMPTROLLER'S DECISION

Zions First National Bank, Salt Lake City, Utah, Zions First National Bank of Cedar City, Cedar City, Utah, and Zions First National Bank of Orem, Orem, Utah, are majority-owned and controlled by Zions Utah Bancorporation, Salt Lake City, Utah, a registered bank holding company. This proposed merger is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to the Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the merger.

October 16, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

CAPISTRANO NATIONAL BANK,
San Juan Capistrano, Calif., and One Branch of Republic Bank, Fullerton, Calif.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
One Branch of Republic Bank, Fullerton, Calif., with	$104,261,000	4	———
was purchased December 14, 1981, by Capistrano National Bank, San Juan Capistrano, Calif. (16518), which had	49,437,000	3	———
After the purchase, the receiving bank had		———	4

COMPTROLLER'S DECISION

On July 27, 1981, application was made to the OCC by Capistrano National Bank, San Juan Capistrano, Calif. (Capistrano National), for permission to purchase certain of the assets and assume certain of the liabilities of the Orangethorpe office (subject office) of Republic Bank, Fullerton, Calif. (Republic). Subject office is at 1700 West Orangethorpe Ave., Fullerton. The application is based on an agreement finalized between Capistrano National and Republic on May 21, 1981.

As of December 31, 1980, Capistrano National held total deposits of approximately $39.5 million in its head office in San Juan Capistrano and one branch office in Santa Ana, Calif.; the bank also has received permission to establish a branch in Irvine, Calif. As of the same date, Republic held total deposits of $81.4 million, subject office held total deposits of $5.2 million.

Capistrano National does not currently operate directly in the northern portion of Orange County where subject office is located. It is presumed that Capistrano National derives little, if any, of its deposit business from that area, as its offices are in the central and southern sections of the county, and numerous financial services alternatives exist between Fullerton and

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

Santa Ana, the site of the closest Capistrano National office. In the Fullerton area, there are also numerous offices of other commercial banks, savings and loan associations and other providers of financial services, including another office of Republic located a short distance from subject office. Consequently, consummation of this proposal would add a new competitor to the Fullerton banking market area and, at the same time, would allow Capistrano National to access business in the northern portion of Orange County directly. Republic would still be able to satisfactorily serve its customers through its remaining Fullerton office.

We find the financial and managerial resources of Capistrano National to be satisfactory and its future prospects to be favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that Capistrano National's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

October 15, 1981

The Attorney General's report was not received.

* * *

CITIZENS UNITED BANK, N.A., Vineland, N.J., and Peoples Bank of South Jersey, Clayton, N.J.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
Citizens United Bank, N.A., Vineland, N.J. (13125), with	$159,352,910	16	
and Peoples Bank of South Jersey, Clayton, N.J., which had	46,808,102	9	
merged December 19, 1981, under the charter of the former and with the title "Citizens United Bank, National Association." The merged bank at date of merger had	205,526,674		25

COMPTROLLER'S DECISION

Citizens United Bank, N.A., Vineland, N.J., and Peoples Bank of South Jersey, Clayton, N.J., are majority-owned and controlled by Citizens Bancorp, Vineland, a registered bank holding company. As such, this proposed merger is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

This it the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the merger.

November 18, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

SOUTHEAST FIRST NATIONAL BANK OF MIAMI,

Miami, Fla., and Southeast Bank, Fort Lauderdale, Fla., and Southeast First National Bank of Sarasota, Sarasota, Fla., and Southeast Bank of Pinellas, Largo, Fla., and Southeast National Bank of Orlando, Orlando, Fla., and Southeast Bank of Pasco, Port Richey, Fla., and Southeast National Bank of Bradenton, Bradenton, Fla., and Southeast Bank of Jacksonville, Jacksonville, Fla., and Southeast Bank of Brevard, Cocoa, Fla., and Southeast Bank of Volusia, New Smyrna Beach, Fla., and Southeast Bank of Tampa, Tampa, Fla., and Southeast First National Bank of Fort Pierce, Fort Pierce, Fla., and Southeast National Bank of Naples, Naples, Fla., and Southeast Bank of Indian River, Vero Beach, Fla., and Southeast Bank of Panama City, Panama City Beach, Fla., and Southeast Bank of Orange Park, Orange Park, Fla., and Southeast Bank of Wildwood, Wildwood, Fla., and Southeast Banks Trust Company, National Association, Miami, Fla., and Southeast Bank of Fort Myers, Fort Myers, Fla., and Southeast Bank of Winter Haven, Winter Haven, Fla.

Names of banks and type of transaction	Total assets*	Banking offices: In operation	Banking offices: To be operated
Southeast First National Bank of Miami, Miami, Fla. (15638), which had	$3,881,519,000	34	—
and Southeast Bank, Fort Lauderdale, Fla., with	693,909,000	27	—
and Southeast First National Bank of Sarasota, Sarasota, Fla. (16531), with	307,722,000	6	—
and Southeast Bank of Pinellas, Largo, Fla., with	264,212,000	6	—
and Southeast National Bank of Orlando, Orlando, Fla. (15814), with	187,625,000	9	—
and Southeast Bank of Pasco, Port Richey, Fla., with	161,848,000	6	—
and Southeast National Bank of Bradenton, Bradenton, Fla. (14704), with	134,299,000	3	—
and Southeast Bank of Jacksonville, Jacksonville, Fla., with	126,850,000	5	—
and Southeast Bank of Brevard, Cocoa, Fla., with	114,188,000	6	—
and Southeast Bank of Volusia, New Smyrna Beach, Fla., with	94,930,000	5	—
and Southeast Bank of Tampa, Tampa, Fla., with	62,454,000	3	—
and Southeast First National Bank of Fort Pierce, Fort Pierce, Fla. (15193), with	55,211,000	1	—
and Southeast National Bank of Naples, Naples, Fla. (15967), with	53,368,000	2	—
and Southeast Bank of Indian River, Vero Beach, Fla., with	42,404,000	2	—
and Southeast Bank of Panama City, Panama City Beach, Fla., with	39,502,000	4	—
and Southeast Bank of Orange Park, Orange Park, Fla., with	30,347,000	3	—
and Southeast Bank of Wildwood, Wildwood, Fla., with	21,210,000	1	—
and Southeast Banks Trust Company, National Association, Miami, Fla. (16399), with	15,038,000	1	—
and Southeast Bank of Fort Myers, Fort Myers, Fla., with	9,243,000	2	—
and Southeast Bank of Winter Haven, Winter Haven, Fla., with	8,809,000	1	—
merged December 30, 1981, under charter of the first (15638) and with the title "Southeast Bank, National Association," headquartered in Miami, Fla. The merged bank, at date of merger had		—	127

COMPTROLLER'S DECISION

Southeast First National Bank of Miami, Miami, Fla., Southeast Bank, Fort Lauderdale, Fla., Southeast First National Bank of Sarasota, Sarasota, Fla., Southeast Bank of Pinellas, Largo, Fla., Southeast National Bank of Orlando, Orlando, Fla., Southeast Bank of Pasco, Port Richey, Fla., Southeast National Bank of Bradenton, Bradenton, Fla., Southeast Bank of Jacksonville, Jacksonville, Fla., Southeast Bank of Brevard, Cocoa, Fla., Southeast Bank of Volusia, New Smyrna Beach, Fla., Southeast Bank of Tampa, Tampa, Fla., Southeast First National Bank of Fort Pierce, Fort Pierce, Fla., Southeast National Bank of Naples, Naples, Fla., Southeast Bank of Indian River, Vero Beach, Fla., Southeast Bank of Panama City, Panama City Beach, Fla., Southeast Bank of Orange Park, Orange Park, Fla., Southeast Bank of Wildwood, Wildwood, Fla., Southeast Banks Trust Company, National Association, Miami, Southeast Bank of Fort Myers, Fort Myers, Fla., and Southeast Bank of Winter Haven, Winter Haven, Fla., are majority-owned and controlled by Southeast Banking Corporation, Miami, a registered bank holding company. This proposed merger is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, is less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the merger.

October 2, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it is essentially a corporate reorganization with no competitive effects.

* * *

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

THE AMERICAN NATIONAL BANK OF NEWPORT,
Newport, Ky., and Bellevue Commercial & Savings Bank, Bellevue, Ky., and AN Bank, National Association, Newport, Ky.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
The American National Bank of Newport, Newport, Ky. (2726), which had	$32,279,000	2	
and Bellevue Commercial & Savings Bank, Bellevue, Ky., with	39,642,000	2	
and AN Bank, National Association (Organizing), Newport, Ky. (2726), with	120,000	0	
merged December 31, 1981, under the charter of American National Bank of Newport (2726) and with the title "American National Bank." The merged bank at date of merger had			4

COMPTROLLER'S DECISION

On August 12, 1981, application was made to the OCC for permission to merge The American National Bank of Newport, Newport, Ky. (American) and Bellevue Commercial & Savings Bank, Bellevue, Ky. (Commercial), into AN Bank, National Association (Organizing), Newport (ANB). ANB, an interim national bank, is being organized by American Bancorp, Inc., Newport (Bancorp), a bank holding company. The merger of American and Commercial into ANB is part of a process whereby Bancorp will acquire 100 percent, less directors' qualifying shares, of American and Commercial. The application is based on agreements finalized between American and ANB and Commercial and ANB on July 31, 1981.

As of December 31, 1980, American, an independent bank, had total deposits of approximately $25 million and operated through two offices, both in Newport. As of the same date, Commercial, also an independent bank, had total deposits of $34.1 million and also operated through two offices, its head office in Bellevue and a branch in Highland Heights. Bancorp is a newly established company, organized to hold the national bank resulting from the proposed transaction.

Neither American nor Bellevue are currently owned or controlled, directly or indirectly, by Bancorp. At consummation, American would merge into ANB, a wholly owned subsidiary of Bancorp. Immediately following, Bancorp would purchase at least 90 percent of the shares of Commercial and contribute those shares to the capital of the bank resulting from the merger of ANB and American (resulting bank). Commercial would then be immediately merged into the resulting bank. The resulting bank, a product of those immediately consecutive mergers, would be a wholly owned subsidiary of Bancorp. Consequently, the merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with two existing commercial banks. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of each bank and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be in the position to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicants' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, are less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

November 30, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

BANKWEST, N.A.,
Pierre, S. Dak., and Sully County Bank, Onida, S. Dak.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Sully County Bank, Onida, S. Dak., with	$ 7,528,000	1	———
was purchased December 31, 1981, by BankWest, N.A., Pierre, S. Dak. (4104), which had	76,341,000	5	———
After the purchase was effected, the receiving bank had		———	6

COMPTROLLER'S DECISION

BankWest, N.A., Pierre, S. Dak., and Sully County Bank, Onida, S. Dak., are majority-owned and controlled by South Dakota Bancshares, Inc., Pierre, a registered bank holding company. As such, this proposal is a corporate reorganization which would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, is less than satisfactory.

This is the prior written approval required by the Bank Merger Act, 12 USC 1828(c), for the applicants to proceed with the proposed transaction.

November 10, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

BARNETT BANK OF SOUTH FLORIDA, NATIONAL ASSOCIATION,
Miami, Fla., and The First State Bank of Miami, Miami, Fla.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Barnett Bank of South Florida, National Association, Miami, Fla. (13828), which had	$895,772,000	33	———
and The First State Bank of Miami, Miami, Fla., with	440,206,000	9	———
merged December 31, 1981, under charter and title of the former. The merged bank at date of merger had		———	42

COMPTROLLER'S DECISION

An application was filed on July 27, 1981, with the OCC pursuant to the Bank Merger Act, 12 USC 1828(c), by The First State Bank of Miami, Miami, Fla. (First Bank) for approval to merge with Barnett Bank of South Florida, National Association, Miami (Barnett Bank) under the charter and with the title of "Barnett Bank of South Florida, National Association." The application is based upon a written agreement executed by the banks on January 28, 1981, and all amendments thereto.

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

First Bank, the bank to be acquired, held total deposits of $353.5 million and operated eight offices as of December 31, 1980. First Bank's main office is about 5 miles north of the downtown Miami central business district and its remaining offices are in Dade County.

Barnett Bank held total deposits of $774.7 million as of December 31, 1980, and operated 23 offices. However, only 11 of those offices are found in what the applicant defines as the metropolitan Miami area.

The threshold question of determining whether the proposed acquisition will violate the Bank Merger Act is whether First Bank and Barnett Bank engage in substantial, direct competition. It appears from the application that the applicants engage in direct but minimal

competition. Both banks orient their services to consumers and real estate development. They have significant service area overlaps. However, the market for their services includes savings and loans and credit unions.†

The competition between applicants is most intense within the service areas of First Bank.‡ For example, First Bank has its highest deposit concentration in its Hialeah service area where it holds approximately 20 percent of commercial bank deposits. Barnett Bank has one office in that area, but holds only .8 percent of commercial bank deposits. First Bank's share has been declining, and the area has 32 offices of 20 commercial banks. Under those conditions, the impact of the merger is minimal.

North Miami is the service area which ranks second in importance for First Bank. Within that area, it holds 8.7 percent of commercial bank deposits and operates two offices. Barnett Bank also has two offices and holds 3.4 percent of commercial bank deposits. However, after the merger, that area will still have 22 commercial banking organizations with 46 offices and 87 other offices of 48 deposit-taking institutions (savings and loans and credit unions).

Both applicants and the Federal Reserve Bank of Atlanta urge a broader market definition which includes all of Dade County and, in the case of the Federal Reserve Bank, portions of Broward County. Analysis of this merger using those broader markets results in a *de minimus* impact from a combination of the two institutions. However, those markets are distorted by the considerable international banking activity, including a substantial presence of foreign banks and Edge Act corporations which do not significantly compete with either of these banks.

We find the financial and managerial resources of Barnett Bank and First Bank to be satisfactory. The future prospects of the proponent banks, independently and in combination, are considered favorable. The Office is not aware of any facts which would produce a negative impact on convenience and needs as a result of this merger.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that Barnett Bank's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

We have carefully considered the application pursuant to the Bank Merger Act and have received reports from the Federal Reserve Bank of Atlanta and the Department of Justice. We conclude that the proposed merger will not violate the Bank Merger Act, will be in the public interest and is therefore approved.

November 6, 1981

† The view of this Office regarding the impact of savings and loans and other nonbank depository institution competition can be found in the OCC opinion on the application to merge Merchants National Bank of Bangor, Bangor, Me., into Northern National Bank, Presque Isle, Me., dated December 12, 1980, especially footnote 12 therein.

‡ Applicants have identified three distinct service areas for First Bank based on the location of its branches and the fact that 75 percent of First Bank's deposits originate from those areas. The areas are more fully delineated in the application and are found in Coral Gables, Hialeah and North Miami.

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

THE CITIZENS AND SOUTHERN NATIONAL BANK,
Savannah, Ga., and The Citizens and Southern Bank of Clayton County, Forest Park, Ga.

Names of banks and type of transaction	Total assets	Banking offices* In operation	Banking offices* To be operated
The Citizens and Southern National Bank, Savannah, Ga. (13068), which had	$4,246,226,000	123	
and The Citizens and Southern Bank of Clayton County, Forest Park, Ga., with	61,353,000	5	
merged December 31, 1981, under charter and title of the former. The merged bank at date of merger had	4,451,823,000		144

COMPTROLLER'S DECISION

On September 21, 1981, application was made to the OCC for authority to merge The Citizens and Southern Bank of Clayton County, Forest Park, Ga. (C&S (Clayton County)) into The Citizens and Southern National Bank, Savannah, Ga. (C&S). The application is based on an agreement finalized between C&S and C&S (Clayton County) on August 21, 1981.

As of June 30, 1981, C&S, the principal subsidiary of Citizens and Southern Georgia Corporation, Atlanta, Ga., a registered bank holding company, was the largest commercial bank in Georgia, holding total deposits of approximately $3.1 billion in more than 120

* A number of transactions were consummated simultaneously, thus the branch figures carried are for the beginning and ending of the day.

offices in the several metropolitan areas of the state. As of the same date, C&S (Clayton County) held total deposits of $54.1 million in five offices, all in Clayton County, south of Atlanta.

While C&S and C&S (Clayton County) are not currently "affiliated" in the formal, legal sense, they have been closely associated for many years through C&S's "correspondent associate" system relationship, created by direct and indirect influence over the associated banks. Pursuant to that relationship, the correspondent associate banks benefit from C&S management assistance and personnel, certain uniform personnel policies and common advertising, and the ability to offer C&S services to their own customers and customers of other C&S associated banks, creating an interdependent financial services system that, for all practical purposes, closely associates the banks in the perception of the banking public. As such, competition between the system's banks is, at best, only nominal. C&S has effectively used that system to extend its services directly into areas not previously permitted under state branching statutes. Consequently, consummation of this proposal is considered to be, in actuality, nothing more than a corporate reorganization within the C&S system. As such, it would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the communities to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

We have considered this application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Therefore, the application is approved.

November 30, 1981

The Attorney General's report was not received.

* * *

THE CITIZENS AND SOUTHERN NATIONAL BANK, Savannah, Ga., and The Citizens and Southern Bank of Cobb County, Austell, Ga.

Names of banks and type of transaction	*Total assets*	*Banking offices** *In operation*	*Banking offices** *To be operated*
The Citizens and Southern National Bank, Savannah, Ga. (13068), which had	$4,246,226,000	123	———
and The Citizens and Southern Bank of Cobb County, Austell, Ga., with	102,014,000	8	———
merged December 31, 1981, under charter and title of the former. The merged bank at date of merger had	4,451,823,000	———	144

COMPTROLLER'S DECISION

On September 21, 1981, application was made to the OCC for authority to merge The Citizens and Southern Bank of Cobb County, Austell, Ga. (C&S (Cobb County)) into The Citizens and Southern National Bank, Savannah, Ga. (C&S). The application is based on an agreement finalized between C&S and C&S (Cobb County) on August 21, 1981.

As of June 30, 1981, C&S, the principal subsidiary of Citizens and Southern Georgia Corporation, Atlanta, Ga., a registered bank holding company, was the largest commercial bank in Georgia, holding total deposits of approximately $3.1 billion in more than 120 offices in the several metropolitan areas of the state. As of the same date, C&S (Cobb County) held total deposits of $88.4 million in seven offices, all in Cobb County, northwest of Atlanta.

While C&S and C&S (Cobb County) are not currently "affiliated" in the formal, legal sense, they have been closely associated for many years through C&S's "correspondent associate" system relationship, created by direct and indirect influence over the associated banks. Pursuant to that relationship, the correspondent associate banks benefit from C&S management assistance and personnel, certain uniform personnel policies and common advertising, and the ability to offer C&S services to their own customers and customers of other C&S associated banks, creating an interdependent financial services system that, for all practical purposes, closely associates the banks in the perception of the banking public. As such, competition between the system's banks is, at best, only nominal. C&S has effectively used that system to extend its services directly into areas not previously permitted under state branching statutes. Consequently, consummation of this proposal is considered to be, in actuality, nothing more than a corporate reorganization within the C&S

* A number of transactions were consummated simultaneously; thus, the branch figures carried are for the beginning and ending of the day.

system. As such, it would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the communities to be served has disclosed no reason why this application should not be approved

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory

We have considered this application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Therefore, the application is approved.

November 30, 1981

The Attorney General's report was not received.

* * *

THE CITIZENS AND SOUTHERN NATIONAL BANK,
Savannah, Ga., and The Citizens and Southern Bank of Gwinnett, Norcross, Ga.

Names of banks and type of transaction	Total assets	Banking offices*	
		In operation	To be operated
The Citizens and Southern National Bank, Savannah, Ga. (13068), which had	$4,246,226,000	123	
and The Citizens and Southern Bank of Gwinnett, Norcross, Ga., with	57,330,000	5	
merged December 31, 1981, under charter and title of the former. The merged bank at date of merger had	4,451,823,000		144

COMPTROLLER'S DECISION

On September 21, 1981, application was made to the OCC for authority to merge The Citizens and Southern Bank of Gwinnett, Norcross, Ga (C&S (Gwinnett)) into The Citizens and Southern National Bank, Savannah, Ga (C&S). The application is based on an agreement finalized between C&S and C&S (Gwinnett) on August 21, 1981.

As of June 30, 1981, C&S, the principal subsidiary of Citizens and Southern Georgia Corporation, Atlanta, Ga., a registered bank holding company, was the largest commercial bank in Georgia, holding total deposits of approximately $3.1 billion in more than 120 offices in the several metropolitan areas of the state. As of the same date, C&S (Gwinnett) held total deposits of $50.2 million in five offices, all in Gwinnett County, northeast of Atlanta

While C&S and C&S (Gwinnett) are not currently "affiliated" in the formal, legal sense, they have been closely associated for many years through C&S's "correspondent associate" system relationship, created by direct and indirect influence over the associated banks. Pursuant to that relationship, the correspondent associate banks benefit from C&S management assistance and personnel, certain uniform personnel policies and common advertising, and the ability to offer C&S services to their own customers and customers of other C&S associated banks, creating an interdependent financial services system that, for all practical purposes, closely associates the banks in the perception of the banking public. As such, competition between the system's banks is, at best, only nominal. C&S has effectively used that system to extend its services directly into areas not previously permitted under state branching statutes. Consequently, consummation of this proposal is considered to be, in actuality, nothing more than a corporate reorganization within the C&S system. As such, it would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory

We have considered this application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Therefore, the application is approved.

November 30, 1981

The Attorney General's report was not received

* * *

* A number of transactions were consummated simultaneously, thus the branch figures carried are for the beginning and ending of the day

THE CITIZENS AND SOUTHERN NATIONAL BANK,
Savannah, Ga., and The Citizens and Southern Bank of Henry County, McDonough, Ga.

Names of banks and type of transaction	Total assets	Banking offices*	
		In operation	To be operated
The Citizens and Southern National Bank, Savannah, Ga. (13068), which had	$4,246,226,000	123	———
and The Citizens and Southern Bank of Henry County, McDonough, Ga., with	13,697,000	2	———
merged December 31, 1981, under charter and title of the former. The merged bank at date of merger had	4,451,823,000	———	144

COMPTROLLER'S DECISION

On September 21, 1981, application was made to the OCC for authority to merge The Citizens and Southern Bank of Henry County, McDonough, Ga. (C&S (Henry County)) into The Citizens and Southern National Bank, Savannah, Ga. (C&S). The application is based on an agreement finalized between C&S and C&S (Henry County) on August 21, 1981.

As of June 30, 1981, C&S, the principal subsidiary of Citizens and Southern Georgia Corporation, Atlanta, Ga., a registered bank holding company, was the largest commercial bank in Georgia, holding total deposits of approximately $3.1 billion in more than 120 offices in the several metropolitan areas of the state. As of the same date, C&S (Henry County) held total deposits of $12.3 million in two offices, both in Henry County, southeast of Atlanta.

While C&S and C&S (Henry County) are not currently "affiliated" in the formal, legal sense, they have been closely associated for many years through C&S's "correspondent associate" system relationship, created by direct and indirect influence over the associated banks. Pursuant to that relationship, the correspondent associate banks benefit from C&S management assistance and personnel, certain uniform personnel policies and common advertising, and the ability to offer C&S services to their own customers and customers of other C&S associated banks, creating an interdependent financial services system that, for all practical purposes, closely associates the banks in the perception of the banking public. As such, competition between the system's banks is, at best, only nominal. C&S has effectively used that system to extend its services directly into areas not previously permitted under state branching statutes. Consequently, consummation of this proposal is considered to be, in actuality, nothing more than a corporate reorganization within the C&S system. As such, it would have no effect on competition.

A review of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the communities to be served has disclosed no reason why this application should not be approved.

The record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their communities, including low and moderate income neighborhoods, are less than satisfactory.

We have considered this application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Therefore, the application is approved.

November 30, 1981

The Attorney General's report was not received.

* * *

* A number of transactions were consummated simultaneously, thus, the branch figures carried are for the beginning and ending of the day

FIRST UNION NATIONAL BANK OF NORTH CAROLINA,
Charlotte, N.C., and The First National Bank of Albemarle, Albemarle, N.C.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
First Union National Bank of North Carolina, Charlotte, N.C. (15650), which had	$5,119,597,000	200	
and The First National Bank of Albemarle, Albemarle, N.C. (11091), with	72,150,000	14	
merged December 31, 1981, under charter and title of the former. The merged bank at date of merger had	5,187,860,000		214

COMPTROLLER'S DECISION

On September 25, 1981, application was made to the OCC for authority to merge The First National Bank of Albemarle, Albemarle, N.C. (FNBA) into First Union National Bank of North Carolina, Charlotte, N.C. (First Union). The application is based on an agreement finalized between First Union and FNBA on April 22, 1981.

As of December 31, 1980, First Union, the principal subsidiary of First Union Corporation, Charlotte, a registered bank holding company, was the third largest commercial bank in the state, holding deposits totalling approximately $2.3 billion and operating 183 offices in 44 of the 100 counties in the state. On September 30, 1981, this Office approved a merger between First Union and First National Bank of Catawba County, Hickory, N.C., which, when consummated, will add four additional counties to First Union's market. However, there remain widely dispensed geographic areas in the state where First Union is not directly represented.

As of the same date, FNBA, an independent bank, held total deposits of approximately $66 million in 13 offices, all operating in Stanly County in the central portion of the state to the east of Charlotte.

The relevant geographic market for this proposal is Stanly County, the area from which FNBA derives the bulk of its deposits. FNBA is the smallest of the five commercial banks operating the 21 banking offices in that market; however, FNBA controls the largest portion of the market's commercial bank deposits (approximately 61 percent). The area is also served by several offices of other deposit-taking financial institutions. First Union operates no offices in the market nor does First National Bank of Catawba County; neither of those banks derives any business from FNBA's market. Consequently, First Union and FNBA do not directly compete in the relevant market. As such, consummation of the proposed merger will merely replace one competitor in the market with another financially stronger competitor, while allowing First Union to expand its market into an area in which it does not currently have direct access. It is the view of this Office that the Stanly County market is competitive and will remain competitive subsequent to the consummation of this proposal.

We find the financial and managerial resources of First Union and FNBA to be satisfactory and that the future prospects of both the existing and resulting banks are favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, is less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition in the relevant market. Accordingly, the application is approved.

November 23, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

NORTH CAROLINA NATIONAL BANK,
Charlotte, N.C., and Carolina First National Bank, Lincolnton, N.C.

Names of banks and type of transaction	Total assets*	Banking offices: In operation	Banking offices: To be operated
North Carolina National Bank, Charlotte, N.C. (13761), which had	$6,543,042,000	177	———
and Carolina First National Bank, Lincolnton, N.C. (6744), with	107,692,000	10	———
merged December 31, 1981, under charter and title of the former. The merged bank at date of merger had		———	187

COMPTROLLER'S DECISION

On September 30, 1981, application was made to the OCC for authority to merge Carolina First National Bank, Lincolnton, N.C. (Carolina First), into North Carolina National Bank, Charlotte, N.C. (NCNB). The application is based on an agreement finalized between NCNB and Carolina First on June 24, 1981.

As of June 30, 1981, NCNB, the principal subsidiary of NCNB Corporation, Charlotte, a registered bank holding company, was the second largest commercial bank in the state, holding total domestic deposits of approximately $3.7 billion in 177 offices in 36 of the 100 counties in the state. As of the same date, Carolina First, an independent bank, held total deposits of $90.5 million in 10 offices, all in and around Lincolnton, Mooresville and Cherryville (Lincoln, southern Iredell and northern Gaston counties), respectively, to the northwest of Charlotte.

The relevant geographic market for this proposal is the areas of Lincoln, Iredell and Gaston counties surrounding the 10 Carolina First offices, *i.e.*, the area from which Carolina First derives the bulk of its deposits. There is no significant existing direct competition between NCNB and Carolina First in that market; NCNB maintains only one office in the area, in Troutmans, in the extreme northeastern corner of Carolina First's market, where Carolina First also maintains an office. Carolina First is the largest of the six commercial banks, operating 29 offices in the relevant market area and controlling slightly more than 55 percent of market commercial bank deposits; NCNB's one office in the area controls only 4.8 percent of market deposits, with other NCNB offices controlling only nominal amounts of deposits derived from within Carolina First's market. Nine savings and loan associations also operate 10 offices within Carolina First's market. Carolina First derives less than 2.5 percent of its deposits from areas outside of its market area which are served by NCNB. Consequently, while consummation of the proposal will eliminate the relatively insignificant competition between NCNB and Carolina First in a very limited portion of Carolina First's market area, such consummation will, in the remainder of the market, replace one competitor with another financially stronger competitor while, at the same time, allowing NCNB to expand into a large market area in which it does not, generally, operate directly. As a result, competition in the total market is expected to be positively affected by the consummation of the proposal.

We find the financial and managerial resources of NCNB and Carolina First to be satisfactory and the future prospects of both the existing and resulting banks to be favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, are less than satisfactory.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find it does not significantly lessen competition. Accordingly, the application is approved.

November 30, 1981

* Asset figures are from the September 30, 1981 report of condition. Information as of date of consummation was not available at press time.

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

VALLEY NATIONAL BANK,
Passaic, N.J., and Liberty National Bank, Hillsdale, N.J.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Liberty National Bank, Hillsdale, N.J. (16162), which had	$ 28,844,000	1	
was purchased December 31, 1981, by Valley National Bank, Passaic, N.J. (15790), with	478,395,000	13	
After the purchase was effected, the receiving bank had			14

COMPTROLLER'S DECISION

On September 11, 1981, application was made to the Office of the Comptroller of the Currency by Valley National Bank, Passaic, N.J. (Valley), for authorization to purchase certain of the assets and assume certain of the liabilities of Liberty National Bank, Hillsdale, N.J. (Liberty). The application is based on an agreement finalized between Valley and Liberty on July 28, 1981.

As of June 30, 1981, Valley, an independent bank, held total deposits of approximately $411.2 million in 14 offices located in southern Passaic, eastern Morris, northern Essex, and scattered areas of Bergen counties. As of the same date, Liberty, also an independent bank, held total deposits of $24.9 million in its single office in Hillsdale, in north-central Bergen County.

The relevant geographic market for this proposal is the area encompassing the nine communities comprising the Pascack Valley section of Bergen County, the area from which Libery derives the bulk of its deposits. Liberty holds only 5.7 percent of the total deposits held by the 21 offices of 10 commercial banks operating in the area. Valley and Liberty operate in separate and distinct markets, as such, there is little existing direct competition between them. Valley derives only 1.4 percent of its deposits from Liberty's market area; the closest Valley office to Liberty's office is 9.3 miles distant and numerous alternative sources of financial services are located in the areas intervening between offices of Valley and Liberty's office. Consummation of this proposal would merely replace one competitor in the relevant market with another financially stronger competitor, while allowing Valley to expand into an area in which it currently has no direct presence. Consequently, such consummation is expected to have a positive effect on competition in the Pascack Valley.

We find the financial and managerial resources of Valley to be satisfactory and the future prospects of the resulting institution to be favorable.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities revealed no evidence that the banks' records of helping to meet the credit needs of their entire communities, including low and moderate income neighborhoods, are less than satisfactory.

As part of its regular responsibilities for assuring compliance with consumer-related laws and regulations, this Office has requested that Liberty reimburse certain customers for inaccurately calculated finance charges. It is understood that Liberty plans to appeal that request to the Deputy Comptroller for Customer and Community Programs. Pending resolution of that issue, Valley has delivered, to the Regional Administrator of National Banks, its assurances that, subsequent to the consummation of the proposed transaction, it will be responsible for whatever reimbursement might be finally judged appropriate pursuant to the appeal.

We have considered the application pursuant to the Bank Merger Act, 12 USC 1828(c), and find that it does not lessen competition. Accordingly, the application is approved.

November 30, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would be not significantly adverse to competition.

* * *

* Asset figures are from the September 30, 1981, report of condition. Information as of date of consummation was not available at press time.

II. Mergers consummated involving a single operating bank

THE FIRST NATIONAL BANK OF GLENS FALLS,
Glens Falls, N.Y., and FNB of Glens Falls, National Association, Glens Falls, N.Y.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The First National Bank of Glens Falls, Glens Falls, N.Y. (980), with	$239,583,000	13	———
and FNB of Glens Falls, National Association (Organizing), Glens Falls, N.Y. (980), which had	120,000	0	———
merged July 1, 1981, under the charter of the latter bank (980) and title "The First National Bank of Glens Falls." The merged bank at date of merger had	239,955,000	———	13

COMPTROLLER'S DECISION

FNB of Glens Falls, National Association, Glens Falls, N.Y., is being organized by First Glen Bancorp, Inc., Glens Falls, N.Y., a bank holding company. The merger of The First National Bank of Glens Falls, Glens Falls, N.Y., into FNB of Glens Falls, National Association, is part of a process whereby First Glen Bancorp, Inc., will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Glens Falls. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

June 1, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which The First National Bank of Glens Falls would become a subsidiary of First Glen Bancorp, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Glen Bancorp, Inc., it would have no effect on competition.

* * *

THE FIRST NATIONAL BANK IN LITTLE ROCK,
Little Rock, Ark., and First National Bank in Little Rock, Little Rock, Ark.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The First National Bank in Little Rock, Little Rock, Ark. (13949), with	$380,288,345	13	———
and First National Bank in Little Rock (Organizing), Little Rock, Ark. (13949), which had	240,000	0	———
merged July 1, 1981, under charter of the latter (13949) and title of the former. The merged bank at date of merger had	380,288,345	———	13

COMPTROLLER'S DECISION

First National Bank in Little Rock, Little Rock, Ark., is being organized by First National Bancshares, Inc., Little Rock, a bank holding company. The merger of The First National Bank in Little Rock, Little Rock, Ark., into First National Bank in Little Rock is part of a process whereby First National Bancshares, Inc., will acquire 100 percent (less directors' qualifying shares) of The First National Bank in Little Rock. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

May 22, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank in Little Rock would become a subsidiary of First National Bancshares, Inc., a bank holding company. The instant merger, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Bancshares, Inc., it would have no effect on competition.

* * *

MOLINE NATIONAL BANK, Moline, Ill., and Republic National Bank of Moline, Moline, Ill.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Moline National Bank, Moline, Ill. (13660), with	$127,480,000	1	
and Republic National Bank of Moline (Organizing), Moline, Ill. (13660), which had	120,000	0	
merged July 1, 1981, under charter of the latter bank (13660) and title "Moline National Bank." The merged bank at date of merger had	127,600,000		1

COMPTROLLER'S DECISION

Republic National Bank of Moline, Moline, Ill., is being organized by First Security Bancorp., Inc., Moline, a bank holding company. The merger of Moline National Bank, Moline, Ill., into Republic National Bank of Moline is part of a process whereby First Security Bancorp., Inc., will acquire 100 percent (less directors' qualifying shares) of Moline National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

May 22, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which Moline National Bank would become a subsidiary of First Security Bancorp., a bank holding company. The instant merger, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Security Bancorp., it would have no effect on competition.

* * *

THE VALLEY NATIONAL BANK OF ARIZONA,
Phoenix, Ariz., and New National Bank of Arizona, Phoenix, Ariz.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The Valley National Bank of Arizona, Phoenix, Ariz. (14324), with	$6,002,778,000	199	———
and New National Bank of Arizona (Organizing), Phoenix, Ariz. (14324), which had	240,000	0	———
merged July 1, 1981, under charter of the latter (14324), and title of the former. The merged bank at date of merger had	6,003,018,000	———	199

COMPTROLLER'S DECISION

New National Bank of Arizona, Phoenix, Ariz., is being organized by Valley National Corporation, Phoenix, a bank holding company. The merger of The Valley National Bank of Arizona, Phoenix, Ariz., into New National Bank of Arizona is part of a process whereby Valley National Corporation will acquire 100 percent (less directors' qualifying shares) of The Valley National Bank of Arizona. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

May 6, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Valley National Bank of Arizona would become a subsidiary of Valley National Corporation, a bank holding company. The instant merger, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Valley National Corporation, it would have no effect on competition.

* * *

ABILENE NATIONAL BANK,
Abilene, Tex., and Allied National Bank of Abilene, Abilene, Tex.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Abilene National Bank, Abilene, Tex. (15253), with	$264,960,000	1	———
and Allied National Bank of Abilene (Organizing), Abilene, Tex. (15253), which had	240,000	0	———
merged July 6, 1981, under charter of the latter (15253) and title of the former. The merged bank at date of merger had	273,824,000	———	1

COMPTROLLER'S DECISION

Allied National Bank of Abilene, Abilene, Tex., is being organized by Consolidated Bancshares, Inc., Abilene, a bank holding company. The merger of Abilene National Bank, Abilene, Tex., into Allied National Bank of Abilene is part of a process whereby Consolidated Bancshares, Inc., will acquire 100 percent (less directors' qualifying shares) of Abilene National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger

March 2, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which Abilene National Bank would become a subsidiary of Consolidated Bancshares, Inc a bank holding company The instant merger, however, would merely combine an existing bank with a nonoperating institution, as such, and without regard to the acquisition of the surviving bank by Consolidated Bancshares, Inc , it would have no effect on competition.

* * *

MOULTRIE NATIONAL BANK,
Moultrie, Ga., and Moultrie-Interim National Bank, Moultrie, Ga.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
Moultrie National Bank, Moultrie, Ga. (13161), with	$58,456,154	1	
and Moultrie-Interim National Bank (Organizing), Moultrie, Ga. (13161), which had	120,000	0	
merged July 8, 1981, under charter of the latter (13161) and with title of the former. The merged bank at date of merger had	58,456,154		1

COMPTROLLER'S DECISION

Moultrie-Interim National Bank, Moultrie, Ga., is being organized by Southwest Georgia Financial Corporation, a bank holding company The merger of Moultrie National Bank, Moultrie, Ga., into Moultrie-Interim National Bank is part of a process whereby Southwest Georgia Financial Corporation will acquire 100 percent (less directors' qualifying shares) of Moultrie National Bank The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c)

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

June 8, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Moultrie National Bank would become a subsidiary of Southwest Georgia Financial Corp., a bank holding company. The instant merger, however, would merely combine an existing bank with a nonoperating institution; as such and without regard to the acquisition of the surviving bank by Southwest Georgia Financial Corp., it would have no effect on competition.

* * *

SECURITY NATIONAL BANK,
Austin, Tex., and Research National Bank, Austin, Tex.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Security National Bank, Austin, Tex. (16791), with	$18,498,000	2	———
and Research National Bank (Organizing), Austin, Tex. (16791), which had	240,000	0	———
merged July 10, 1981, under charter of the latter and with title of the former. The merged bank at date of merger had	19,292,000	———	2

COMPTROLLER'S DECISION

Research National Bank, Austin, Tex., is being organized by Republic of Texas Corporation, Dallas, a bank holding company. The merger of Security National Bank, Austin, Tex., into Research National Bank is part of a process whereby Republic of Texas Corporation will acquire 100 percent (less directors' qualifying shares) of Security National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

June 8, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Security National Bank would become a subsidiary of Republic of Texas Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Republic of Texas Corporation, it would have no effect on competition.

* * *

PERTH AMBOY NATIONAL BANK,
Perth Amboy, N.J., and Second Jersey National Bank, Perth Amboy, N.J.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Perth Amboy National Bank, Perth Amboy, N.J. (12524), with	$62,474,000	6	———
and Second Jersey National Bank (Organizing), Perth Amboy, N.J. (12524), which had	120,000	0	———
merged July 14, 1981, under charter of the latter (12524) and title "The First Jersey National Bank Central." The merged bank at date of merger had	62,782,000	———	6

COMPTROLLER'S DECISION

Second Jersey National Bank, Perth Amboy, N.J., is being organized by First Jersey National Corporation, Jersey City, N.J., a bank holding company. The merger of Perth Amboy National Bank, Perth Amboy, into Second Jersey National Bank is part of a process whereby First Jersey National Corporation will acquire 100 percent (less directors' qualifying shares) of Perth Amboy National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

* Asset figures are as of call dates immediately before and after transaction.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

June 1, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Perth Amboy National Bank would become a subsidiary of First Jersey National Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Jersey National Corporation, it would have no effect on competition.

* * *

THE HAVERHILL NATIONAL BANK,
Haverhill, Mass., and Old Colony Bank of Northern Essex County, National Association, Haverhill, Mass.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
The Haverhill National Bank, Haverhill, Mass. (484), with	$48,020,000	8	———
and Old Colony Bank of Northern Essex County, National Association (Organizing), Haverhill, Mass. (484), which had	120,000	0	———
merged July 20, 1981, under charter and title of the latter. The merged bank at date of merger had	48,140,000	———	8

COMPTROLLER'S DECISION

Old Colony Bank of Northern Essex County, National Association, Haverhill, Mass., is being organized by First National Boston Corporation, Boston, a bank holding company. The merger of The Haverhill National Bank, Haverhill, Mass., into Old Colony Bank of Northern Essex County, National Association, is part of a process whereby First National Boston Corporation will acquire 100 percent (less directors' qualifying shares) of The Haverhill National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

June 19, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Haverhill National Bank would become a subsidiary of First National Boston Corporation, a bank holding company. The instant merger, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First National Boston Corporation, it would have no effect on competition.

* * *

THE FIRST NATIONAL BANK OF ANTIOCH,
Antioch, Ill., and Second National Bank of Antioch, Antioch, Ill.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
The First National Bank of Antioch, Antioch, Ill. (12870), with	$41,439,000	1	———
and Second National Bank of Antioch (Organizing), Antioch, Ill. (12870), which had	120,000	0	———
merged July 24, 1981, under the charter of latter bank (12870) and title "The First National Bank of Antioch." The merged bank at date of merger had	41,706,000	———	1

COMPTROLLER'S DECISION

Second National Bank of Antioch, Antioch, Ill., is being organized by Antioch Bancshares, Inc., Antioch, a bank holding company. The merger of The First National Bank of Antioch, Antioch into Second National Bank of Antioch is part of a process whereby Antioch Bancshares, Inc., will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Antioch. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commerical bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

May 22, 1981

* Asset figures are as of call dates immediately before and after transaction.

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which First National Bank of Antioch would become a subsidiary of Antioch Bancshares, Inc., a bank holding company. The instant merger, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Antioch Bancshares, Inc., it would have no effect on competition.

* * *

THE FIRST NATIONAL BANK OF GAINESVILLE,
Gainesville, Ga., and The New First National Bank of Gainesville, Gainesville, Ga.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The First National Bank of Gainesville, Gainesville, Ga. (3983), with	$162,659,429	5	———
and The New First National Bank of Gainesville (Organizing), Gainesville, Ga. (3983), which had	150,000	0	———
consolidated July 31, 1981, under the charter and title of the former. The consolidated bank at date of consolidation had	162,659,429	———	5

COMPTROLLER'S DECISION

The New First National Bank of Gainesville, Gainesville, Ga. (New First) is being organized by First National Bancorp, a bank holding company. The consolidation of The First National Bank of Gainesville, Gainesville, Ga., and New First is part of a process whereby First National Bancorp will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Gainesville. The consolidation is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the consolidation, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed consolidation.

June 5, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed consolidation is part of a plan through which the First National Bank of Gainesville would become a subsidiary of First National Bancorp, a bank holding company The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First National Bancorp, it would have no effect on competition.

* * *

CITY BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, Jackson, Mich., and CBT National Bank, Jackson, Mich.

Names of banks and type of transaction	Total assets	Banking offices In operation	Banking offices To be operated
City Bank and Trust Company, National Association, Jackson, Mich. (15367), with	$270,944,000	18	———
and CBT National Bank (Organizing), Jackson, Mich. (15367), which had	120,005	0	———
merged August 6, 1981, under the charter of the latter bank (15367) and title "City Bank and Trust Company, National Association." The merged bank at date of merger had	284,856,000	———	18

COMPTROLLER'S DECISION

CBT National Bank, Jackson, Mich., is being organized by CB Financial Corporation, Jackson, a bank holding company The merger of City Bank and Trust Company, National Association, Jackson, into CBT National Bank is part of a process whereby CB Financial Corporation will acquire 100 percent (less directors' qualifying shares) of City Bank and Trust Company, National Association. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

July 6, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the City Bank and Trust Company would become a subsidiary of CB Financial Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution, as such, and without regard to the acquisition of the surviving bank by CB Financial Corporation, it would have no effect on competition

* Asset figures are for whole bank as of call dates immediately before and after transaction

* * *

THE IDAHO FIRST NATIONAL BANK,
Boise, Idaho, and The New Idaho First National Bank, Boise, Idaho

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The Idaho First National Bank, Boise, Idaho (1668), with	$1,873,488,340	70	———
and The New Idaho First National Bank (Organizing), Boise, Idaho (1668), which had	240,000	0	———
merged August 14, 1981, under the charter of the latter bank (1668) and title "The Idaho First National Bank." The merged bank at date of merger had	1,873,728,340	———	70

COMPTROLLER'S DECISION

The New Idaho First National Bank, Boise, Idaho, is being organized by Moore Financial Group, Incorporated, Boise, a bank holding company. The merger of The Idaho First National Bank, Boise, Idaho, into The New Idaho First National Bank is part of a process whereby Moore Financial Group, Incorporated, will acquire 100 percent (less directors' qualifying shares) of The Idaho First National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

July 9, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Idaho First National Bank would become a subsidiary of Moore Financial Group, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Moore Financial Group, Inc., it would have no effect on competition.

* * *

CARROLLTON FIRST NATIONAL BANK,
Carrollton, Tex., and Josey National Bank, Carrollton, Tex.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Carrollton First National Bank, Carrollton, Tex. (16721), with	$22,430,927	1	———
and Josey National Bank (Organizing), Carrollton, Tex. (16721), which had	120,000	0	———
merged August 31, 1981, under charter of the latter and title of the former. The merged bank at date of merger had	22,838,563	———	1

COMPTROLLER'S DECISION

Josey National Bank, Carrollton, Tex., is being organized by Commerce Southwest Inc., Dallas, a bank holding company. The merger of Carrollton First National Bank, Carrollton, Tex., into Josey National Bank is part of a process whereby Commerce Southwest Inc., will acquire 100 percent (less directors' qualifying shares) of Carrollton First National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs

of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

The proposed merger may not be consummated until evidence of compliance with 12 USC 215a(2) is submitted to this Office.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

July 30, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which Carrollton First National Bank would become a subsidiary of Commerce Southwest Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Commerce Southwest Inc., it would have no effect on competition.

* * *

FIRST NATIONAL BANK IN PALM BEACH, Palm Beach, Fla., and The Reynolds National Bank in Palm Beach, Palm Beach, Fla.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
First National Bank in Palm Beach, Palm Beach, Fla. (13090), with	$273,350,000	6	———
and The Reynolds National Bank in Palm Beach (Organizing), Palm Beach, Fla. (13090), which had	120,000	0	———
merged August 31, 1981, under charter of the latter and title of the former. The merged bank at date of merger had	273,350,000	———	6

COMPTROLLER'S DECISION

The Reynolds National Bank in Palm Beach, Palm Beach, Fla. (Reynolds), is being organized by The First National Bank of Palm Beach, Incorporated, Palm Beach, a bank holding company. The merger of First National Bank in Palm Beach, Palm Beach, Fla. (First), into Reynolds is a part of a process whereby The First National Bank of Palm Beach, Incorporated, will acquire 100 percent (less directors' qualifying shares) of First. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be in the position to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

June 2, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank in Palm Beach would become a subsidiary of The First National Bank of Palm Beach, Incorporated, a bank holding company. The instant merger, however, would merely combine an existing bank with a nonoperating institution; as such and without regard to the acquisition of the surviving bank by First National Bank of Palm Beach, Incorporated, it would have no effect on competition.

* * *

LAKE NATIONAL BANK,
Painesville, Ohio, and Bank One of Northeastern Ohio, National Association, Painesville, Ohio

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Lake National Bank, Painesville, Ohio (14686), with	$413,066,000	24	———
and Bank One of Northeastern Ohio, National Association (Organizing), Painesville, Ohio (14686), which had	120,000	0	———
merged August 31, 1981, under charter and title of the latter. The merged bank at date of merger had	432,347,000	———	24

COMPTROLLER'S DECISION

Bank One of Northeastern Ohio, National Association, Painesville, Ohio, is being organized by Banc One Corporation, Columbus, Ohio, a bank holding company. The merger of Lake National Bank, Painesville, Ohio, into Bank One of Northeastern Ohio, National Association, is part of a process whereby Banc One Corporation will acquire 100 percent (less directors' qualifying shares) of Lake National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

July 9, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Lake National Bank would become a subsidiary of Banc One Corporation, a bank holding company. The instant merger, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Banc One Corporation, it would have no effect on competition.

* * *

REPUBLIC NATIONAL BANK OF AUSTIN,
Austin, Tex., and Republic Bank of Commerce, National Association, Austin, Tex.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Republic National Bank of Austin, Austin, Tex. (16634), with	$20,955,457	1	———
and Republic Bank of Commerce, National Association, Austin, Tex. (Organizing), which had	240,030	0	———
merged August 31, 1981, under charter of the latter and title of the former. The merged bank at date of merger had	21,195,487	———	1

COMPTROLLER'S DECISION

Republic Bank of Commerce, National Association, Austin, Tex., is being organized by National Bancshares Corporation of Texas, San Antonio, Tex., a bank holding company. The merger of Republic National Bank of Austin, Austin, into Republic Bank of Commerce, National Association, is part of a process whereby National Bancshares Corporation of Texas will acquire 100 percent (less directors' qualifying shares) of Republic National Bank of Austin. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both banks and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicants to proceed with the proposed merger.

July 28, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which Republic National Bank of Austin would become a subsidiary of National Bancshares Corporation of Texas, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution, as such, and without regard to the acquisition of the surviving bank by National Bancshares Corporation of Texas, it would have no effect on competition.

* * *

THE COLLIN COUNTY NATIONAL BANK OF McKINNEY, McKinney, Tex., and Collin County Bank, National Association, McKinney, Tex.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
The Collin County National Bank of McKinney, McKinney, Tex. (2909), with	$5,556,040	1	
and Collin County Bank, National Association (Organizing), McKinney, Tex. (2909), which had	120,000	0	
merged September 4, 1981, under charter of the latter and with the title of the former. The merged bank at date of merger had	5,676,040		1

COMPTROLLER'S DECISION

Collin County Bank, National Association, McKinney, Tex., is being organized by Texas American Bancshares Inc., Fort Worth, Tex., a bank holding company. The merger of The Collin County National Bank of McKinney, McKinney, Tex., into Collin County Bank, National Association, is part of a process whereby Texas American Bancshares Inc., will acquire 100 percent (less directors' qualifying shares) of The Collin County National Bank of McKinney. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

August 3, 1981

* * *

THE FIRST NATIONAL BANK OF FERRUM, Ferrum, Va., and Ferrum Bank, National Association, Ferrum, Va.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
The First National Bank of Ferrum, Ferrum, Va. (12311), with	$17,354,303	1	
and Ferrum Bank, National Association (Organizing), Ferrum, Va. (12311), which had	125,000	0	
merged September 4, 1981, under charter of the latter bank (12311) and title of the former. The merged bank at date of merger had	17,354,303		1

COMPTROLLER'S DECISION

Ferrum Bank, National Association, Ferrum, Va., is being organized by Piedmont Bankgroup, Inc., Martinsville, Va., a bank holding company. The merger of The First National Bank of Ferrum, Ferrum, Va., into Ferrum Bank, National Association, is part of a process whereby Piedmont Bankgroup, Inc., will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Ferrum. The merger is a vehicle for a bank holding company acquisition and combines a

nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

August 4, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank of Ferrum would become a subsidiary of Piedment Bankgroup, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Piedmont Bankgroup, Inc., it would have no effect on competition.

* * *

KANAWHA VALLEY BANK, N.A., Charleston, W.Va., and KVB, National Association, Charleston, W.Va.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	*To be operated*
Kanawha Valley Bank, N.A., Charleston, W.Va. (16433), with	$506,268,000	2	
and KVB, National Association (Organizing), Charleston, W.Va. (16433), which had	240,000	0	
merged September 4, 1981, under charter of the latter bank (16433) and title of the former. The merged bank at date of merger had	506,508,000		2

COMPTROLLER'S DECISION

KVB, National Association, Charleston, W.Va., is being organized by One Valley Bancorp of West Virginia, Inc., Charleston, a bank holding company. The merger of Kanawha Valley Bank, N.A., Charleston, W.Va., into KVB, National Association, is part of a process whereby One Valley Bancorp of West Virginia, Inc., will acquire 100 percent (less directors' qualifying shares) of Kanawha Valley Bank, N.A. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

July 27, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Kanawha Valley Bank would become a subsidiary of One Valley Bancorp of West Virginia, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by One Valley Bancorp of West Virginia, Inc., it would have no effect on competition.

* * *

THE FIRST NATIONAL BANK OF CARTERSVILLE,
Cartersville, Ga., and FNBC Interim National Bank, Cartersville, Ga.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The First National Bank of Cartersville, Cartersville, Ga. (4012), with	$61,947,055	3	———
and FNBC Interim National Bank (Organizing), Cartersville, Ga. (4012), which had	123,600	0	———
consolidated September 9, 1981, under charter and title of the former. The consolidated bank at date of consolidation had	61,947,055	———	3

COMPTROLLER'S DECISION

FNBC Interim National Bank, Cartersville, Ga., is being organized by Sunbelt Bank Corporation, Cartersville, a bank holding company. The consolidation of The First National Bank of Cartersville, Cartersville, with FNBC Interim National Bank is part of a process whereby Sunbelt Bank Corporation will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Cartersville. The consolidation is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents, and the future prospects of the resulting bank are favorable. After the consolidation, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed consolidation.

August 6, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed consolidation is part of a plan through which the First National Bank of Cartersville would become a subsidiary of FNBC Holding Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by FNBC Holding Corporation, it would have no effect on competition.

* * *

AMERICAN NATIONAL BANK,
Bakersfield, Calif., and New American National Bank, Bakersfield, Calif.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
American National Bank, Bakersfield, Calif. (15437), with	$350,642,000	27	———
and New American National Bank (Organizing), Bakersfield, Calif. (15437), which had	240,000	0	———
merged September 15, 1981, under the charter of the latter bank (15437) and title of the former. The merged bank at date of merger had	350,882,000	———	27

COMPTROLLER'S DECISION

New American National Bank, Bakersfield, Calif., is being organized by California Pacific Corporation, Bakersfield, a bank holding company. The merger of American National Bank, Bakersfield, into New American National Bank is part of a process whereby California Pacific Corporation will acquire 100 percent (less directors' qualifying shares) of American National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both proponents and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it

to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

June 19, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the American National Bank would become a subsidiary of California Pacific Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by California Pacific Corporation, it would have no effect on competition.

* * *

PUGET SOUND NATIONAL BANK,
Tacoma, Wash., and Puget Sound Bank, N.A., Tacoma, Wash.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
Puget Sound National Bank, Tacoma, Wash. (12292), which had	$869,116,332	53	
and Puget Sound Bank, N.A., Tacoma, Wash. (12292), with	240,000	0	
merged October 1, 1981, under charter of the latter and title of the former. The merged bank at date of merger had	869,356,332		53

COMPTROLLER'S DECISION

Puget Sound Bank, N.A., Tacoma, Wash., is being organized by Puget Sound Bancorp, Tacoma, a bank holding company. The merger of Puget Sound National Bank, Tacoma, into Puget Sound Bank, N.A., is part of a process whereby Puget Sound Bancorp will acquire 100 percent (less directors' qualifying shares) of Puget Sound National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

July 27, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which Puget Sound National Bank would become a subsidiary of Puget Sound Bancorp, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution, as such, and without regard to the acquisition of the surviving bank by Puget Sound Bancorp, it would have no effect on competition.

* * *

COMMERCIAL NATIONAL BANK OF CHICAGO,
Chicago, Ill., and Commercial Interim National Bank, Chicago, Ill.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
Commercial National Bank of Chicago, Chicago, Ill. (14526), with	$189,085,022	2	———
and Commercial Interim National Bank (Organizing), Chicago, Ill. (14526), which had	240,000	0	———
merged October 30, 1981, under the charter of the latter (14526) and title of the former. The merged bank at date of merger had	189,085,022	———	2

COMPTROLLER'S DECISION

Commercial Interim National Bank (Interim), Chicago, Ill., is being organized by Commercial Chicago Corporation, a bank holding company. The merger of Commercial National Bank of Chicago, Chicago, into Interim is part of a process whereby Commercial Chicago Corporation will acquire 100 percent (less directors' qualifying shares) of Commercial National Bank of Chicago. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be in the position to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

September 21, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed consolidation is part of a plan through which the Commercial National Bank of Chicago would become a subsidiary of Commercial Chicago Corporation, a bank holding company. The instant transaction, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Commercial Chicago Corporation, it would have no effect on competition.

* * *

FIRST INTERSTATE BANK OF DENVER, NATIONAL ASSOCIATION,
Denver, Colo., and New American National Bank, Denver, Colo.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
New American National Bank, Denver, Colo., (Organizing), with	$ 240,000	0	———
and First Interstate Bank of Denver, National Association, Denver, Colo. (12517), which had	270,533,745	1	———
consolidated November 1, 1981, under charter and title of the latter. The consolidated bank at date of consolidation had	270,533,795	———	1

COMPTROLLER'S DECISION

New American National Bank, Denver, Colo., is being organized by First Interstate Bancorp, Los Angeles, Calif., a bank holding company. The consolidation of First Interstate Bank of Denver, National Association, Denver, with New American National Bank is part of a process whereby First Interstate Bancorp will acquire 100 percent of First Interstate Bank of Denver, National Association. The consolidation is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both banks and the future prospects of the resulting bank are favorable. After the consolidation, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will

permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed consolidation.

September 15, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed consolidation is part of a plan through which the First Interstate Bank of Denver, National Association, would become a subsidiary of First Interstate Bancorp, a bank holding company. The instant transaction, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Interstate Bancorp, it would have no effect on competition.

* * *

FIRST NATIONAL BANK OF STAFFORD,
Houston, Tex., and Texas Commerce Bank—Stafford, National Association, Houston, Tex.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
First National Bank of Stafford, Houston, Tex. (14778) with	$100,500,390	1	———
and Texas Commerce Bank—Stafford, National Association, Houston, Tex. (Organizing), which had	240,000	0	———
merged November 2, 1981, under the charter and title of the latter (14778). The merged bank at date of merger had	100,740,390	———	1

COMPTROLLER'S DECISION

Texas Commerce Bank—Stafford, National Association, Houston, Tex., is being organized by Texas Commerce Bancshares, Inc., Houston, a bank holding company. The merger of First National Bank of Stafford, Houston, into Texas Commerce Bank—Stafford, National Association, is part of a process whereby Texas Commerce Bancshares, Inc., will acquire 100 percent (less directors' qualifying shares) of First National Bank of Stafford. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

September 24, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed consolidation is part of a plan through which the First National Bank of Stafford would become a subsidiary of Texas Commerce Bancshares, Inc., a bank holding company. The instant transaction, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Texas Commerce Bancshares, Inc., it would have no effect on competition.

* * *

THE FIRST NATIONAL BANK OF AUTAUGA COUNTY,
Prattville, Ala., and Autauga Bank, National Association, Prattville, Ala.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The First National Bank of Autauga County, Prattville, Ala. (16219), with	$15,882,460	1	
and Autauga Bank, National Association, Prattville, Ala. (Organizing), which had	123,600	0	
merged November 3, 1981, under charter of the latter and title of the former (16219). The merged bank at date of merger had	15,886,060		1

COMPTROLLER'S DECISION

Autauga Bank, National Association, Prattville, Ala., is being organized by AmSouth Bancorporation, Birmingham, Ala., a bank holding company. The merger of The First National Bank of Autauga County, Prattville, into Autauga Bank, National Association, is part of a process whereby AmSouth Bancorporation will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Autauga County. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both banks and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and the information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicants to proceed with the proposed merger.

September 29, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which First National Bank of Autauga County would become a subsidiary of AmSouth Bancorporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by AmSouth Bancorporation, it would have no effect on competition.

* * *

NATIONAL SAVINGS AND TRUST COMPANY,
Washington, D.C., and NS&T Bank, National Association, Washington, D.C.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
National Savings and Trust Company, Washington, D.C. (15605), which had	$549,405,000	16	
and NS&T Bank, National Association, Washington, D.C. (15605), with	240,000	0	
merged November 16, 1981, under charter and title of the latter. The merged bank at date of merger had	549,645,000		16

COMPTROLLER'S DECISION

NS&T Bank, National Association, is being organized by NS&T Bancshares, Incorporated, Washington, D.C., a bank holding company. The merger of National Savings and Trust Company into NS&T Bank, National Association, is part of a process whereby NS&T Bancshares, Incorporated, will acquire 100 percent (less directors' qualifying shares) of National Savings and Trust Company. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both banks and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be in the position to draw on the financial and mana

gerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

October 15, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which National Savings and Trust Company would become a subsidiary of NS&T Bankshares, Incorporated, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by NS&T Bankshares, Incorporated, it would have no effect on competition.

* * *

THE FIRST NATIONAL BANK OF PENNSYLVANIA,
Meadville, Pa., and The Interim First National Bank of Pennsylvania, Meadville, Pa.

Names of banks and type of transaction	*Total assets**	*Banking offices In operation*	*Banking offices To be operated*
The First National Bank of Pennsylvania, Meadville, Pa. (12), which had	$4,510,300,000	27	———
and The Interim First National Bank of Pennsylvania, Meadville, Pa. (12), with	120,000	0	———
merged November 19, 1981, under charter of the latter and title of the former. The merged bank at date of merger had		———	27

COMPTROLLER'S DECISION

The Interim First National Bank of Pennsylvania, Meadville, Pa., is being organized by The First National Pennsylvania Corporation, Meadville, a bank holding company. The merger of The First National Bank of Pennsylvania, Meadville, into The Interim First National Bank of Pennsylvania is part of a process whereby The First National Pennsylvania Corporation will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Pennsylvania. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

August 5, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank of Pennsylvania would become a subsidiary of First National Pennsylvania Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution, as such, and without regard to the acquisition of the surviving bank by First National Pennsylvania Corporation, it would have no effect on competition.

* * *

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

THE FIRST NATIONAL BANK OF COBB COUNTY,
Marietta, Ga., and Interim Cobb Bank, N.A., Marietta, Ga.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
The First National Bank of Cobb County, Marietta, Ga. (3830), with	$187,374,000	9	
and Interim Cobb Bank, N.A. (Organizing), Marietta, Ga. (3830), which had	240,000	0	
merged November 30, 1981, under charter of the latter (3830) and with title of the former. The merged bank at date of merger had	187,374,000		9

COMPTROLLER'S DECISION

Interim Cobb Bank, N.A., Marietta, Ga. (Interim), is being organized by First City Bancorp, Inc., a bank holding company. The merger of The First National Bank of Cobb County, Marietta, into Interim is part of a process whereby First City Bancorp, Inc., will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Cobb County. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

October 16, 1981

The Attorney General's report was not received.

* * *

THE FORT BEND NATIONAL BANK OF RICHMOND,
Richmond, Tex., and New Fort Bend National Bank, Richmond, Tex.

Names of banks and type of transaction	Total assets*	Banking offices: In operation	Banking offices: To be operated
The Fort Bend National Bank of Richmond, Richmond, Tex. (12648), with	$26,770,000	1	
and New Fort Bend National Bank (Organizing), Richmond, Tex. (12648), which had	120,000	0	
merged December 1, 1981, under charter of the latter (12648) and with the title "First City National Bank of Richmond." The merged bank at date of merger had			1

COMPTROLLER'S DECISION

New Fort Bend National Bank, Richmond, Tex., is being organized by First City Bancorporation of Texas, Inc., Houston, Tex., a bank holding company. The merger of The Fort Bend National Bank of Richmond, Richmond, into New Fort Bend National bank is part of a process whereby First City Bancorporation of Texas, Inc., will acquire 100 percent (less directors' qualifying shares) of Fort Bend National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both banks and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.
October 20, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Fort Bend National Bank of Richmond would become a subsidiary of First City Bancorporation of Texas, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First City Bancorporation of Texas, Inc., it would have no effect on competition.

* * *

THE RONDOUT NATIONAL BANK, Kingston, N.Y., and Henry Street National Bank, Kingston, N.Y.

Names of banks and type of transaction	*Total assets**	*Banking offices*	
		In operation	*To be operated*
The Rondout National Bank, Kingston, N.Y. (1120), with	$53,955,000	7	———
and Henry Street National Bank, Kingston, N.Y. (1120), which had	1,000,000	0	———
merged December 1, 1981, under charter of the latter and title of the former. The merged bank at date of merger had		———	7

COMPTROLLER'S DECISION

Henry Street National Bank, Kingston, N.Y., is being organized by United Bank Corporation of New York, Albany, N.Y., a bank holding company. The merger of The Rondout National Bank, Kingston, into Henry Street National Bank is part of a process whereby United Bank Corporation of New York will acquire 100 percent (less directors' qualifying shares) of The Rondout National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.
October 13, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which Rondout National Bank would become a subsidiary of United Bank Corporation of New York, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by United Bank Corporation of New York, it would have no effect on competition.

* * *

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

THE FIRST NATIONAL BANK IN CHAMPAIGN,
Champaign, Ill., and Republic National Bank in Champaign, Champaign, Ill.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
The First National Bank in Champaign, Champaign, Ill. (13630), which had	$123,182,000	3	
and Republic National Bank in Champaign, Champaign, Ill. (13630), with	240,000	0	
merged December 4, 1981, under charter of the latter and title of the former. The merged bank at date of merger had			3

COMPTROLLER'S DECISION

Republic National Bank in Champaign, Champaign, Ill., is being organized by Champaign Bancorp, Inc., Champaign, a bank holding company. The merger of The First National Bank in Champaign, Champaign, into Republic National Bank in Champaign is part of a process whereby Champaign Bancorp, Inc., will acquire 100 percent (less directors' qualifying shares) of The First National Bank in Champaign. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be in the position to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

November 3, 1981

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which First National Bank in Champaign would become a subsidiary of Champaign Bancorp, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Champaign Bancorp, Inc., it would have no effect on competition.

* * *

WESTVIEW NATIONAL BANK, WACO,
Waco, Tex., and New Westview National Bank, Waco, Tex.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Westview National Bank, Waco, Waco, Tex. (14901), with	$58,514,000	1	
and New Westview National Bank (Organizing), Waco, Tex. (14901), which had	240,000	0	
merged December 5, 1981, under charter of the latter (14901) and with the title "Westview National Bank." The merged bank at date of merger had	58,514,000		1

COMPTROLLER'S DECISION

New Westview National Bank, Waco, Tex., is being organized by First Financial Bancorporation, Inc., Waco, a bank holding company. The merger of Westview National Bank, Waco, Waco, into New Westview National Bank is part of a process whereby First Financial Bancorporation, Inc., will acquire 100 percent (less directors' qualifying shares) of Westview National Bank, Waco. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be

able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

November 3, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed consolidation is part of a plan through which the Westview National Bank, Waco, would become a subsidiary of First Financial Bancorporation, a bank holding company. The instant transaction, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Financial Bancorporation, it would have no effect on competition.

* * *

THE CLINTON COUNTY NATIONAL BANK AND TRUST COMPANY OF WILMINGTON, Wilmington, Ohio, and CC National Bank, Wilmington, Ohio

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
The Clinton County National Bank and Trust Company of Wilmington, Wilmington, Ohio (1997), with	$82,752,000	8	———
and CC National Bank (Organizing), Wilmington, Ohio (1997), which had	136,000	0	———
merged December 6, 1981, under charter of the latter (1997), and with the title "The National Bank and Trust Company." The merged bank at date of merger had	82,888,000	———	8

COMPTROLLER'S DECISION

CC National Bank, Wilmington, Ohio, is being organized by Intercounty Bancshares, Inc., Wilmington, a bank holding company. The merger of The Clinton County National Bank and Trust Company of Wilmington, Wilmington, into CC National Bank is part of a process whereby Intercounty Bancshares, Inc., will acquire 100 percent (less directors' qualifying shares) of The Clinton County National Bank and Trust Company of Wilmington. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

November 3, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which The Clinton County National Bank and Trust Company of Wilmington would become a subsidiary of Inter-County Bancshares Inc., a bank holding company. The instant transaction, however, would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by InterCounty Bancshares Inc., it would have no effect on competition.

* * *

CAPISTRANO NATIONAL BANK,
San Juan Capistrano, Calif., and Interim Capistrano National Bank, San Juan Capistrano, Calif.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
Capistrano National Bank, San Juan Capistrano, Calif. (16518), which had	$49,437,000	3	
and Interim Capistrano National Bank, San Juan Capistrano, Calif. (16518), with	120,000	0	
merged December 8, 1981, under charter of the latter and title of the former. The merged bank at date of merger had			3

COMPTROLLER'S DECISION

Interim Capistrano National Bank, San Juan, Capistrano, Calif., is being organized by Capistrano Bancorp, San Juan Capistrano, a bank holding company. The merger of Capistrano National Bank, San Juan Capistrano, into Interim Capistrano National Bank is part of a process whereby Capistrano Bancorp will acquire 100 percent (less directors' qualifying shares) of Capistrano National Bank. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

November 6, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Capistrano National Bank would become a subsidiary of Capistrano Bancorp, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution, as such, and without regard to the acquisition of the surviving bank by Capistrano Bancorp, it would have no effect on competition.

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

* * *

THE PEOPLE'S NATIONAL BANK OF IBERIA PARISH,
New Iberia, La., and PFNB National Bank, New Iberia, La.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The People's National Bank of Iberia Parish, New Iberia, La. (4524), with	$110,767,521	5	
and PFNB National Bank (Organizing), New Iberia, La. (4524), which had	120,000	0	
merged December 11, 1981, under charter of the latter (4524) and title of the former. The merged bank at date of merger had	110,767,521		5

COMPTROLLER'S DECISION

PFNB National Bank, New Iberia, La., is being organized by The People's First National Bancshares, Inc., New Iberia, a bank holding company. The merger of The People's National Bank of Iberia Parish, New Iberia, into PFNB National Bank is part of a process whereby The People's First National Bancshares, Inc., will acquire 100 percent (less directors' qualifying shares) of The People's National Bank of Iberia Parish. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both banks and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial re-

sources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

November 3, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which The People's National Bank of Iberia Parish would become a subsidiary of The People's First National Bancshares, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by The People's First National Bancshares, Inc., it would have no effect on competition.

* * *

FIRST STATE BANK OF UNION, Union, Mo., and First National Bank of Franklin County, Union, Mo.

Names of banks and type of transaction	*Total assets**	*Banking offices*	
		In operation	*To be operated*
First State Bank of Union, Union, Mo., which had	$13,187,000	1	
and First National Bank of Franklin County, Union, Mo. (17139), with	120,000	0	
merged December 15, 1981, under charter and title of the latter. The merged bank at date of merger had			1

COMPTROLLER'S DECISION

First National Bank of Franklin County, Union, Mo., is being organized by Manufacturers Bancorp, Inc., St. Louis, Mo., a bank holding company. The merger of First State Bank of Union, Union, Mo., into First National Bank of Franklin County is part of a process whereby Manufacturers Bancorp, Inc., will acquire 100 percent (less directors' qualifying shares) of First State Bank of Union. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

November 3, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which First State Bank of Union would become a subsidiary of Manufacturers Bancorp, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Manufacturers Bancorp, Inc., it would have no effect on competition.

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

* * *

THE OMAHA NATIONAL BANK,
Omaha, Nebr., and The Omaha Interim National Bank, Omaha, Nebr.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
The Omaha National Bank, Omaha, Nebr. (1633), which had	$1,004,598,527	3	———
and The Omaha Interim National Bank, Omaha, Nebr. (1633), with	240,000	0	———
consolidated December 21, 1981, under the charter of the former and the title "Omaha National Bank." The consolidated bank at date of consolidation had	1,004,838,527	———	3

COMPTROLLER'S DECISION

The Omaha Interim National Bank, Omaha, Nebr. is being organized by Omaha National Corporation, Omaha, a bank holding company. The consolidation of The Omaha National Bank, Omaha, and The Omaha Interim National Bank is a part of a process whereby Omaha National Corporation will acquire 100 percent (less directors' qualifying shares) of The Omaha National Bank. The consolidation is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the consolidation, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed consolidation.

November 18, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Omaha National Bank would become a subsidiary of Omaha National Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Omaha National Corporation, it would have no effect on competition.

* * *

THE FIRST NATIONAL BANK OF ALBEMARLE,
Albemarle, N.C., and Queen City National Bank, Charlotte, N.C.

Names of banks and type of transaction	Total assets*	Banking offices: In operation	Banking offices: To be operated
The First National Bank of Albemarle, Albemarle, N.C. (11091), which had	$72,315,000	14	———
and Queen City National Bank, Charlotte, N.C. (11091), with	2,053,000	0	———
consolidated December 28, 1981, under charter and title of the former. The consolidated bank at date of consolidation had		———	14

COMPTROLLER'S DECISION

Queen City National Bank, Charlotte, N.C., is being organized by First Union Corporation, Charlotte, a bank holding company. The consolidation of The First National Bank of Albemarle, Albemarle, N.C., and Queen City National Bank is part of a process whereby First Union Corporation will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Albemarle. The consolidation is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the consolidation, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed consolidation.

November 23, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank of Albemarle would become a subsidiary of First Union Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Union Corporation, it would have no effect on competition.

* * *

FIRST NATIONAL BANK OF BAD AXE,
Bad Axe, Mich., and National Bank of Bad Axe, Bad Axe, Mich.

Names of banks and type of transaction	Total assets*	Banking offices: In operation	Banking offices: To be operated
First National Bank of Bad Axe, Bad Axe, Mich. (15840), with	$53,395,000	7	———
and National Bank of Bad Axe, Bad Axe, Mich. (15840), with	120,000	0	———
merged December 28, 1981, under charter of the latter and title of the former. The merged bank at date of merger had		———	7

COMPTROLLER'S DECISION

National Bank of Bad Axe, Bad Axe, Mich., is being organized by First of Huron Corp., Bad Axe, a bank holding company. The merger of First National Bank of Bad Axe, Bad Axe, into National Bank of Bad Axe is part of a process whereby First of Huron Corp. will acquire 100 percent (less directors' qualifying shares) of First National Bank of Bad Axe. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act of the applicant to proceed with the proposed merger.

November 23, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank of Bad Axe would become a subsidiary of First of Huron Corp., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First of Huron Corp., it would have no effect on competition.

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

* * *

THE FIRST NATIONAL BANK IN MOUNT PLEASANT,
Mount Pleasant, Tex., and Jefferson Street National Bank, Mount Pleasant, Tex.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The First National Bank in Mount Pleasant, Mount Pleasant, Tex. (13257), which had	$101,054,000	1	
and Jefferson Street National Bank, Mount Pleasant, Tex. (13257), with	120,000	0	
merged December 29, 1981, under charter of the latter and title of the former. The merged bank at date of merger had	101,174,000		1

COMPTROLLER'S DECISION

Jefferson Street National Bank, Mount Pleasant, Tex., is being organized by First International Bancshares, Inc., Dallas, Tex., a bank holding company. The merger of The First National Bank in Mount Pleasant, Mount Pleasant, into Jefferson Street National Bank is part of a process whereby First International Bancshares, Inc., will acquire 100 percent (less directors' qualifying shares) of The First National Bank in Mount Pleasant.

The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

November 27, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank in Mount Pleasant would become a subsidiary of First International Bancshares, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First International Bancshares, Inc., it would have no effect on competition.

* * *

FIRST NATIONAL BANK IN PULASKI,
Pulaski, Tenn., and First Phantom National Bank, Pulaski, Tenn.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
First National Bank in Pulaski, Pulaski, Tenn. (14619) with	$83,702,000	4	
and First Phantom National Bank, Pulaski, Tenn. (14619) with	120,000	0	
merged December 30, 1981, under charter of the latter and title of the former. The merged bank at date of merger had			4

COMPTROLLER'S DECISION

First Phantom National Bank, Pulaski, Tenn., is being organized by First Pulaski National Corporation, Pulaski, a bank holding company. The merger of First National Bank of Pulaski into First Phantom National Bank is part of a process whereby First Pulaski National Corporation will acquire 100 percent (less directors' qualifying shares) of First National Bank of Pulaski, Pulaski.

The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

December 17, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank of Pulaski would become a subsidiary of First Pulaski National Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Pulaski National Corporation, it would have no effect on competition.

* * *

FIRST NATIONAL BANK AND TRUST OF MENOMINEE, Menominee, Mich., and Second National Bank & Trust Company of Menominee, Menominee, Mich.

Names of banks and type of transaction	*Total assets*	*Banking offices*	
		In operation	*To be operated*
First National Bank and Trust of Menominee, Menominee, Mich. (3256), which had	$47,614,195	3	———
and Second National Bank & Trust Company of Menominee, Menominee, Mich. (3256), with	125,000	0	———
merged December 31, 1981, under charter of the latter and title of the former. The merged bank at date of merger had	47,739,195	———	3

COMPTROLLER'S DECISION

Second National Bank & Trust Company of Menominee, Menominee, Mich., is being organized by Michigan Financial Corporation, Marquette, Mich., a bank holding company. The merger of First National Bank and Trust of Menominee, Menominee, into Second National Bank & Trust Company of Menominee is part of a process whereby Michigan Financial Corporation will acquire 100 percent (less directors' qualifying shares) of First National Bank and Trust of Menominee. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

December 11, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank and Trust of Menominee would become a subsidiary of Michigan Financial Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Michigan Financial Corporation, it would have no effect on competition.

* * *

FIRST NATIONAL BANK IN DEKALB,
DeKalb, Ill., and Second National Bank in DeKalb, DeKalb, Ill.

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
First National Bank in DeKalb, DeKalb, Ill. (14008), with	$82,998,927	2	
and Second National Bank in DeKalb, DeKalb, Ill. (14008), which had	1,200,000	0	
merged December 31, 1981, under charter of the latter and title of the former. The merged bank at date of merger had	84,198,927		2

COMPTROLLER'S DECISION

Second National Bank in DeKalb, DeKalb, Ill. (Second), is being organized by First DeKalb Bancshares, Inc., DeKalb, a bank holding company. The merger of First National Bank in DeKalb, DeKalb, into Second is part of a process whereby First DeKalb Bancshares, Inc., will acquire 100 percent (less directors' qualifying shares) of First National Bank in DeKalb. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

November 30, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which First National Bank in DeKalb would become a subsidiary of First DeKalb Bancshares, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First DeKalb Bancshares, Inc., it would have no effect on competition.

* * *

FIRST NATIONAL BANK OF AKRON,
Akron, Ohio, and FNB National Bank, Akron, Ohio

Names of banks and type of transaction	Total assets	Banking offices: In operation	Banking offices: To be operated
First National Bank of Akron, Akron, Ohio (14579), with	$970,258,578	35	
and FNB National Bank, Akron, Ohio (14579), which had	240,000	0	
merged December 31, 1981, under charter of the latter and title of the former. The merged bank at date of merger had	970,498,578		35

COMPTROLLER'S DECISION

FNB National Bank, Akron, Ohio, is being organized by First Bancorporation of Ohio, Akron, a bank holding company. The merger of First National Bank of Akron, Akron, into FNB National Bank is part of a process whereby First Bancorporation of Ohio will acquire 100 percent (less directors' qualifying shares) of First National Bank of Akron. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger
November 20, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which First National Bank of Akron would become a subsidiary of First Bancorporation of Ohio, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Bancorporation of Ohio, it would have no effect on competition.

* * *

THE FIRST NATIONAL BANK OF GIBSON COUNTY, Humboldt, Tenn., and The Fourth National Bank of Gibson County, Humboldt, Tenn.

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
The First National Bank of Gibson County, Humboldt, Tenn. (15056), which had	$22,956,000	3	
and The Fourth National Bank of Gibson County, Humboldt, Tenn. (15056), with	120,000	0	
merged December 31, 1981, under charter of the latter and title of the former. The merged bank at date of merger had			3

COMPTROLLER'S DECISION

The Fourth National Bank of Gibson County, Humboldt, Tenn., is being organized by Tennessee Commerce Corporation, Jackson, Tenn., a bank holding company. The merger of The First National Bank of Gibson County, Humboldt, into The Fourth National Bank of Gibson County is a part of a process whereby Tennessee Commerce Corporation, will acquire 100 percent (less directors' qualifying shares) of The First National Bank of Gibson County. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be in the position to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger
December 30, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the First National Bank of Gibson County would become a subsidiary of Tennessee Commerce Corporation, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Tennessee Commerce Corporation, it would have no effect on competition.

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981 report of condition for the operating bank. Information as of date of consummation was not available at press time.

* * *

METROPOLITAN NATIONAL BANK OF FARMINGTON,
Farmington Hills, Mich., and Metropolitan Bank of Farmington, National Association, Farmington Hills, Mich.

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Metropolitan National Bank of Farmington, Farmington Hills, Mich. (15049), which had	$27,466,000	2	
and Metropolitan Bank Farmington, National Association, Farmington Hills, Mich. (15049), with	240,000	0	
merged December 31, 1981, under the charter of the former and title of the latter. The merged bank at date of merger had	27,466,000		2

COMPTROLLER'S DECISION

Metropolitan Bank Farmington, National Association, Farmington Hills, Mich., is being organized by Metro Bancorp, Farmington Hills, a bank holding company. The merger of Metropolitan National Bank of Farmington, Farmington Hills, into Metropolitan Bank Farmington, National Association, is a part of a process whereby Metro Bancorp will acquire 100 percent (less directors' qualifying shares) of Metropolitan National Bank of Farmington. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire communities, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act of the applicant to proceed with the proposed merger.

November 18, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Metropolitan National Bank of Farmington would become a subsidiary of Metro Bancorp, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Metro Bancorp, it would have no effect on competition.

* * *

THE NATIONAL BANK OF WATERLOO,
Waterloo, Iowa, and PAB, National Association, Waterloo, Iowa

Names of banks and type of transaction	Total assets*	Banking offices	
		In operation	To be operated
The National Bank of Waterloo, Waterloo, Iowa (13702), with	$217,238,000	4	
and PAB, National Association, Waterloo, Iowa (13702), with	240,000	0	
merged December 31, 1981, under charter of the latter and title of the former. The merged bank at date of merger had			4

COMPTROLLER'S DECISION

PAB, National Association, Waterloo, Iowa, is being organized by Iowa National Bankshares Corp, Waterloo, a bank holding company. The merger of The National Bank of Waterloo, Waterloo, into PAB, National Association, is a part of a process whereby Iowa National Bancshares Corp will acquire 100 percent (less directors' qualifying shares) of The National Bank of Waterloo. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

* Asset figures are from the organizing information for the organizing bank and from the September 30, 1981, report of condition for the operating bank. Information as of date of consummation was not available at press time.

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire communities, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act of the applicant to proceed with the proposed merger.

November 30, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which National Bank of Waterloo would become a subsidiary of Iowa National Bankshares Corp, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Iowa National Bankshares Corp, it would have no effect on competition.

* * *

THE OLD PHOENIX NATIONAL BANK OF MEDINA, Medina, Ohio, and OP National Bank, Medina, Ohio

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
The Old Phoenix National Bank of Medina, Medina, Ohio (4842), which had	$228,445,000	12	———
and OP National Bank, Medina, Ohio (4842), with	120,000	0	———
consolidated December 31, 1981, under charter of the latter and title "Old Phoenix National Bank of Medina." The consolidated bank at date of consolidation had	228,565,000	———	12

COMPTROLLER'S DECISION

OP National Bank, Medina, Ohio, is being organized by First Bancorporation of Ohio, Akron, Ohio, a bank holding company. The consolidation of The Old Phoenix National Bank of Medina, Medina, with OP National Bank is a part of a process whereby First Bancorporation of Ohio will acquire 100 percent (less directors' qualifying shares) of The Old Phoenix National Bank of Medina. The consolidation is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both entities and the future prospects of the resulting bank are favorable. After the consolidation, the resulting bank will be able to draw on the financial and managerial resources of its new corporate parent. That will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveals no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act of the applicant to proceed with the proposed consolidation.

November 20, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which The Old Phoenix National Bank of Medina would become a subsidiary of First Bancorporation of Ohio, a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by First Bancorporation of Ohio, it would have no effect on competition.

* * *

SOUTHEAST NATIONAL BANK OF PENNSYLVANIA,
Chester, Pa., and Southeast National Interim Bank of Pennsylvania, East Whiteland Township, Pa

Names of banks and type of transaction	Total assets	Banking offices	
		In operation	To be operated
Southeast National Bank of Pennsylvania, Chester, Pa. (355), which had	$695,138,000	29	
and Southeast National Interim Bank of Pennsylvania, East Whiteland Township, Pa. (355), with	60,000	0	
merged December 31, 1981, under charter of the latter and title of the former. The merged bank at date of merger had	695,198,000		29

COMPTROLLER'S DECISION

Southeast National Interim Bank of Pennsylvania is being organized by Southeast National Bancshares of Pennsylvania, Inc., East Whiteland Township, Pennsylvania, a bank holding company. The merger of Southeast National Bank of Pennsylvania into Southeast National Interim Bank of Pennsylvania is part of a process whereby Southeast National Bancshares of Pennsylvania, Inc., will acquire 100 percent (less directors' qualifying shares) of Southeast National Bank of Pennsylvania. The merger is a vehicle for a bank holding company acquisition and combines a nonoperating bank with an existing commercial bank. As such, it presents no competitive issues under the Bank Merger Act, 12 USC 1828(c).

The financial and managerial resources of both banks and the future prospects of the resulting bank are favorable. After the merger, the resulting bank will be in the position to draw on the financial and managerial resources of its new corporate parent. This will permit it to more effectively serve the convenience and needs of its community.

A review of the record of this application and other information available to this Office as a result of its regulatory responsibilities reveal no evidence that the applicant's record of helping to meet the credit needs of the entire community, including low and moderate income neighborhoods, is less than satisfactory.

This decision is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed merger.

July 27, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

The proposed merger is part of a plan through which the Southeast National Bank of Pennsylvania would become a subsidiary of Southeast National Bancshares of Pennsylvania, Inc., a bank holding company. The instant transaction would merely combine an existing bank with a nonoperating institution; as such, and without regard to the acquisition of the surviving bank by Southeast National Bancshares of Pennsylvania, Inc., it would have no effect on competition.

* * *

BANCO SAFRA, S.A.,
Sao Paulo, Brazil, and One Branch of Bankers Trust Company, New York City, N.Y.

Names of banks and type of transaction	*Total assets**	*Banking offices*	
		In operation	*To be operated*
One Branch of Bankers Trust Company, New York City, N.Y., with		1	
was purchased July 27, 1981, by Banco Safra, S.A., Sao Paulo, Brazil, which had		0	
After the purchase was effected, the receiving bank had			1

COMPTROLLER'S DECISION

On March 17, 1981, Banco Safra, S.A., Sao Paulo, Brazil (Safra) made application for authority to purchase certain of the assets and assume certain of the liabilities of a branch of Bankers Trust Company, New York City, N.Y. (Bankers Trust), located at 1114 Avenue of the Americas, New York (Bankers Trust Branch). The application is based on an agreement between Safra and Bankers Trust, dated February 5, 1981. As of June 30, 1980, Safra, a commercial bank which is part of the Safra Group, a diversified financial group with activities in consumer finance, leasing, investment banking and other related fields, had total deposits of $381 million. Safra does not currently operate any offices in the United States; however, on December 5, 1980, this Office approved Safra's application to establish and operate a federal branch in New York City, pursuant to the International Banking Act of 1978. Subsequent to the consummation of this proposal, Safra plans to operate the Bankers Trust Branch as its approved federal branch. As of December 31, 1980, Bankers Trust company, a subsidiary of Bankers Trust New York Corporation, a bank hodling company, had total deposits of $23.9 billion; the Bankers Trust Branch had total deposits of approximately $11 million.

The Bankers Trust Branch is in mid-town Manhattan at the corner of 42nd St. and Avenue of the Americas and derives virtually all of its assets and liabilities from Manhattan. Within the Borough of Manhattan there are over 560 offices of over 125 domestic and foreign banks. As of June 30, 1980, those offices held more than $143 billion in deposits. Transfer of the Bankers Trust Branch from Bankers Trust to Safra will not affect the competitive environment in Manhattan.

The competitive effects of this proposal, if any, will be felt within a few blocks of the Bankers Trust Branch. Within that area there are at least 50 offices of over 25 competing banks, both foreign and domestic. In fact, Bankers Trust itself has over five offices in the vicinity. Therefore, the proposal actually adds a competitor to the branch's immediate trade area as well as the Borough of Manhattan. Consequently, it is actually pro-competitive, albeit in a miniscule degree.

During the process of considering Safra's application to establish and operate a federal branch in New York, this Office considered its financial and managerial resources and found them to be satisfactory. The consummation of this proposal is not expected to affect those factors in other than a positive way. Safra's future prospects after consummation of the proposal and its entrance into the New York banking market appear favorable, as does its ability to effectively compete there, while offering another banking alternative to serve the convenience and needs of the banking public within the community.

Safra does not now operate in the United States and, as such, does not have any record to assess with regard to helping to meet the credit needs of its community. However, as part of its application to the Federal Deposit Insurance Corporation to obtain federal deposit insurance, Safra has presented a proposed community reinvestment statement and community delineation which outlines its commitment to help meet the credit needs of its community, including low and moderate income neighborhoods.

This is the prior written approval required by the Bank Merger Act for the applicant to proceed with the proposed transaction. This will also confirm our Office's December 5, 1980, approval of Safra's application to establish and operate a federal branch and authorizes Safra to operate that federal branch at the site of the Bankers Trust Branch, subsequent to consummation of this transaction and the granting of insurance by the Federal Deposit Insurance Corporation.

May 13, 1981

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a substantial competitive effect.

*Asset figures for this transaction are not available

* * *

Interpretive Letters—July 15, 1981, to December 15, 1981

199—June 11, 1981

This is in response to your memorandum of December 15, 1980, to Charles F. Byrd, Assistant Director, Legal Advisory Services Division. In that memorandum you state that a recent examination of the *** ("Bank") indicated that a collective investment fund maintained by the Bank has invested in both *** Trust *** and *** Trust ***. The distributer for both *** and *** is *** Corporation ***. When aggregated, the Bank's investment in *** and *** for the collective investment fund exceeds 10 percent of that fund's market value. You have asked whether this constitutes a violation of 12 C.F.R. § 9.18(b)(9)(ii). In my opinion, the Bank's investment does constitute a violation of that section.

As you know, section 9.18(b)(9)(ii) limits a national bank's investment on behalf of a collective investment fund. In pertinent part, it provides that:

> No investment for a collective investment fund shall be made in stocks, bonds, or other obligations of any one person, firm, or corporation if as a result of such investment the total amount invested in stocks, bonds, or other obligations issued or guaranteed by such person, firm or corporation would aggregate in excess of 10 percent of the then market value of the fund.

The question of whether *** and *** must be treated as "one person, firm or corporation" under the above quoted provision is not to be determined on the basis of whether these entities are separate merely in a technical legal sense. To so interpret and apply the section's requirements would elevate form over substance. Rather, the applicability of the section to investments in *** and *** must be determined on the basis of all the particular facts involved. After analysis of those facts, the section must be interpreted and applied in a manner consistent with its purpose.

The purpose of section 9.18(b)(9)(ii) is to ensure the diversification of investments made on behalf of collective investment funds. The required diversification greatly reduces the risk that more than 10% of a collective investment fund's assets would be lost or threatened by the failure or financial problems of any single entity. Given the purpose of section 9.18(b)(9)(ii), I believe that *** and *** must be treated as "one person, firm or corporation" for purposes of that section's 10 percent investment limit. However, in stating this opinion, I note that the issue is a close one and that a plausible argument can be made for reaching the opposite conclusion.

***, Counsel to ***, presented the argument for treating *** and *** as separate entities under section 9.18(b)(9)(ii) in a December 16, 1980, letter to Mr. Byrd. Mr. *** noted that:

> (1) The securities of *** and *** are separately registered with the SEC under the Securities Act of 1933 and the Investment Company Act of 1940;
> (2) *** and *** have separate prospectuses;
> (3) *** and *** invest in different types of obligations (commercial paper and certificates of deposit, respectively);
> (4) *** and *** were established, and operate, pursuant to separate Declarations of Trust;
> (5) *** and *** maintain separate books and are separate corporate entities; and
> (6) *** and *** each have a separate Board of Directors.

As the facts noted by Mr. *** indicate, *** and *** are separate legal entities. There is no indication that there are any facts which would allow a court to "pierce the corporate veil" and find one entity liable for the obligations of the other. Therefore, the financial difficulties of one entity would not necessarily affect the other entity.

As Mr. *** also notes, *** invests in commercial paper while *** invests in certificates of deposit. Thus, the funds do not have any particular investments in common. Nor do they make the same individual credit risk decisions.

Due to the above noted facts, a collective investment fund portfolio resulting from dividing the investment of a certain sum between *** and *** would be clearly more diversified than a portfolio resulting from investment of the same sum in only one of the two entities. That being the case, it can be argued that the purpose of the section 9.18(b)(9)(ii) diversification requirement is not undermined by a finding that *** and *** are not to be considered as "one person, firm or corporation" for purposes of that section.

Although I believe the argument for treating *** and *** as separate entities under section 9.18(b)(9)(ii) has some merit, it is my opinion that the facts in this particular case lead to the opposite conclusion.

*** and *** have the same investment adviser, i.e. *** Corp. ***, ***, ***, and *** all have the same small group of individuals acting as officers and trustees or directors.[1] Thus, the same small group of individuals is responsible for making all major investment and managerial decisions for both *** and ***. If this small group misinterprets market trends, and consequently makes investment errors, both *** and *** are likely to be adversely affected. Similarly, both *** and *** are likely to be adversely affected if this small group is guilty of fraud or mismanagement. Thus, investments in *** and *** expose an investor to a number of common risks.

NOTE: Interpretive letters are accumulated and released on the 15th of each month. Letters published here were released between July 15, 1981, and December 15, 1981.

[1] The officers and directors of the entities [illegible] recent information supplied to the Office by Mr. *** [illegible]

Due to the seriousness of the common risks resulting from common management it is my opinion that the efficacy of section 9 18(b)(9)(ii) as a risk diversification requirement would be seriously undermined if the section were interpreted to allow the treatment of *** and *** as separate entities Such an interpretation would allow the Bank to continue to expose its collective investment fund customers to the common risks involved in the Bank's unduly concentrated investments in *** and *** Furthermore, under the precedent such an interpretation would set, section 9 18(b)(9)(ii) would not be available in the future to preclude national banks from investing 50%, or even 100%, of their collective investment funds' assets in a series of entities which, although legally separate, are controlled by the same small group of individuals. Thus, in my opinion, section 9.18(b)(9)(ii) must be interpreted to require the aggregation of investments in *** and *** for purposes of the section's 10 percent investment limit.[2]

Therefore, it is my opinion that the Bank violated section 9 18(b)(9)(ii) when investments it made on behalf of its collective investment fund in *** and ***, when aggregated, exceeded 10% of that fund's market value.

In rendering the above opinion regarding the application of the 9.18(b)(9)(ii) language "one person, firm, or corporation," I note that the terms used in that section may have different meanings when used in other regulations or statutes. *See e.g.* 15 U.S.C. § 80a-2(a)(28) (the definition of "person" under the Investment Company Act of 1940). This is because, as discussed above, the meaning of the language of section 9 18(b)(9)(ii) must be determined in light of the purpose of that section. Consequently, the meaning of specific terms in section 9 18(b)(9)(ii) may differ from the meaning of the same terms in statutes or regulations which have purposes other than those of section 9 18(b)(9)(ii).

In making its investments in *** and ***, the Bank apparently relied on advice from legal counsel which, contrary to the opinion expressed in this letter, found that investments in those two entities need not be aggregated under section 9.18(b)(9)(ii). Given this fact, it appears that enforcement action should not be taken to sanction the Bank for past violations of 9.18(b)(9)(ii) based on aggregation of the Bank's investments in those two funds. Nor would it appear that such enforcement action should be taken against other national banks which in the past made similar investments which, although made in good faith, constituted violations of section 9 18(b)(9)(ii) However, the Bank and any other national banks which in the past made similar investments in violation of section 9.18(b)(9)(ii), should be required to promptly eliminate any currently existing violations of that section Bank refusals to take necessary corrective actions could lead to enforcement actions.

I trust this has been responsive to your inquiry

Dean E. Miller
Deputy Comptroller for Specialized Examinations

* * *

200—July 6, 1981

Ms. Anne Hess
Vice President
Southeast Morgage Company
1390 Brickell Avenue
Miami, Florida 33131

Dear Ms. Hess:

On May 8, 1981, Southeast Mortgage Company submitted, on behalf of its national bank affiliates, documents related to its Adjustable Mortgage Loan Program, a payment-capped adjustable-rate mortgage plan, in accordance with Section 9 of 12 CFR part 29. On June 18, 1981, additional documents related to the plan were submitted to this Office.

Southeast's Adjustable Mortgage Loan Program provides for semiannual interest rate adjustments indexed to the 6-month moving average of the monthly average yield on United States Treasury securities adjusted to a constant maturity of 3 years. Monthly payments are fixed for 3-year periods. During the constant-payment period interest rate changes are implemented through changes in the rate of amortization. In high interest rate periods, the banks may set the initial monthly payment below the level required to fully amortize the loan at the then current interest rate. In such cases the outstanding loan balance will increase at the beginning of the loan term. The plan limits interest rate changes to ± 100 basis points at each rate adjustment. There is no limit on the amount of negative amortization that may occur during the life of the loan. Changes in monthly payments are limited to ± 25% with the exception that the 25% payment change limitation does not apply to the last two payment adjustments. Interest rate increases that occur during the last constant-payment period may necessitate a balloon payment at the end of the loan term. Southeast's program is described to prospective borrowers in a question and answer brochure and a disclosure statement Southeast plans to send interest rate adjustment notices, payment change notices, and an annual statement to Adjustable Mortgage borrowers

The Office has completed its review of the payment-capped adjustable-rate mortgage (PCM) plan submitted by Southeast Mortgage Company As you know, the Office has reserved the right to modify or terminate a PCM plan if it is determined that the program does not adequately provide for repayment of the loans in a timely manner or if the program does not sufficiently protect borrowers against payment volatility

[2] Although the above opinion is limited to *** and *** (the Bank's [illegible]), my research indicates that at least three other funds [illegible] by *** [illegible] for other entities with management [illegible] group that controls and manages *** and *** [illegible] and have management consisting of [illegible] investments in [illegible] *** Trust *** and Trust *** should also be [illegible] with [illegible] *** and *** for section 9 18(b)(9)(ii) [illegible]

The Office has general concerns that apply to a number of PCM plans that have been submitted for review. Because the Office believes that a period of experimentation with different versions of payment-capped adjustable-rate mortgage instruments will be valuable, it is not at this time requesting comprehensive changes in the plans to meet those concerns. Such concerns may be the subject of a future letter or may be addressed by future regulation. The Office does, however, have specific concerns with Southeast's Adjustable Mortgage Loan plan and has determined that changes to meet those concerns must be made. Because of public interest in the types of mortgage instruments evolving in the market, this letter, except for any portions containing confidential, proprietary information, will be made available to the public.

General Concerns about PCMs

PCM plans combine periods of fixed monthly payment levels, subject to constrained payment level adjustments between periods, with more frequent interest rate adjustments—a combination that will typically result in changes in the rate of amortization. The plans thus offer a trade-off between the short-run certainty of level monthly payments and the long-run uncertainty of the total cost of the loan, the size of payment adjustments at some later date, and the number of years it will take to pay off the loan. Indeed, under some interest rate scenarios such a loan can only be repaid within the stated maturity by either a significant increase in the monthly payment level or a large balloon payment.

Payment-capped mortgage instruments can be designed to limit the possibility of substantial amounts of negative amortization. Under the submitted programs, unlimited increases in the outstanding loan balance may occur due to infrequent payment adjustments, low payment caps that bind over several adjustment periods, and unlimited interest rate increases.

The likelihood of significant negative amortization may be increased by the practice of setting an initial payment below that required to amortize fully the loan at the interest rate based on the then current index value. The Office is concerned that borrowers might misinterpret the low initial monthly payments as representative of a "bargain" interest rate. While the monthly payment level may be equal to or below that required for comparable loans made under other mortgage programs on the market, the interest rate on the loan after the first rate adjustment is not a below-market rate. It is important that the lender clearly disclose the interest rate implied by the index and alert the borrower to the likelihood of negative amortization occurring early in the loan term.

Loans calling for infrequent payment adjustments and incorporating small payment caps embody a "buy-now pay-later" philosophy that is potentially misleading. If the payment caps are binding for several consecutive payment adjustments, the monthly payment may be well below the amount required to amortize fully the loan. In such a case it is important that the borrower be made aware of the continual additions to the outstanding loan balance and the current interest rate on the loan.

The Office's ARM regulation limits the amount of negative amortization that may occur between payment adjustments to 1% of the principal outstanding at the beginning of that constant-payment period times the number of 6-month periods between payment adjustments. Additionally, at least every five years, the monthly payment must be reset at a level sufficient to amortize the loan at the then current interest rate over the remainder of the loan term.

There are a number of other ways in which negative amortization can be addressed. Increasing the frequency of payment adjustments and the size of payment caps, removing the caps at some point in the loan term, and limiting interest rate changes either explicitly or through the selection of a fairly stable interest rate index, would reduce the likelihood of substantial increases in the outstanding loan balance. Alternatively, in recognition of the increased riskiness of PCMs, lenders may choose to offer them only to borrowers likely to experience steady increases in income or to borrowers likely to sell their houses and repay their loans well before the loans reach maturity.

Lenders have an obligation to assure that borrowers are given sufficient information to provide them an opportunity to understand both the mechanics of the loan and its implications, *e.g.*, the potential for negative amortization and its effect on the homeowner's accumulation of equity, the potential for a balloon payment at the end of the loan term, and the potential effects of unconstrained interest rate adjustments. When information is disseminated through brochures, disclosure statements, and periodic documentation of the loan's history, the lender has an obligation to make sure that such documents are accurate, easily understood, and comprehensive.

Specific Changes in Southeast's Program

Once the following are implemented the national banks affiliated with Southeast Mortgage Company may begin lending under the submitted program. Modified documents reflecting such changes should be submitted to this Office.

1. *Initial Interest Rate and Calculation of the First Monthly Payment*

In periods of high interest rates, Southeast intends to set the initial monthly payment below that implied by the interest rate derived from the then current index value. In such cases negative amortization will occur from the outset of the loan term, and Southeast should inform borrowers of the fully amortizing monthly payment.

2. *Disclosure*

Southeast has prepared four information documents to be given to its Adjustable Mortgage Loan Program borrowers. The Office has reviewed those documents for accuracy and to determine whether they are consistent with the spirit of the disclosure requirements specified by the Office for interest-rate-capped adjustable-rate mortgages in 12 CFR 29.8 (a) and (b).

(a) *Question and Answer Brochure*

The Office's ARM regulation requires that the full shopping disclosure be provided to borrowers on the earlier of the date on which the bank first provides written information concerning residential mortgage loans available from the bank or provides a loan application to the prospective borrower. The Office is requiring that Southeast meet that requirement and provide the full shopping disclosure in conjunction with the question and answer brochure.

Certain statements in the brochure are inaccurate or incomplete. They are as follows:

The answer to question 4 states that on the 3-year anniversary the payment rate calculation will be based on a predetermined percentage over the index rate. This will not be true if the interest rate cap or the 25% limit on payment changes is binding at that time.

Questions 8, 9, 12, and 17 refer to the accrual rate. The term accrual rate should be replaced with the term interest rate. Similarly, the Office suggests that the term adjustable rate in the answer to question 1 be replaced with the term interest rate.

The answer to question 17 is incomplete. A rising interest rate is not a necessary condition for negative amortization. Negative amortization will also occur when the interest rate is unchanged but the monthly payment is insufficient to amortize fully the loan. The answer should point out this possibility.

The answer to question 18 states that an outstanding loan balance at the end of the loan term would be an "unusual" occurrence. Even if the payment for the final 3-year period is set to amortize the loan fully, a balloon payment at the end of the loan term will be required if the interest rate on the loan rises over that period. Describing that possibility as "unusual" may be misleading.

Answers to other questions should be amended as necessary to reflect the changes required in Southeast's payment-capped adjustable-rate mortgage program.

(b) *Disclosure Notice and Information*

Southeast should add a section explaining negative amortization, *i.e.*, what it is, how it occurs, how substantial it may be under adverse interest rate conditions, and what implications it may have for subsequent payment increases, and a possible balloon payment. Southeast should explain the meaning of the term balloon payment. This section should appear early in the disclosure statement.

It is unclear whether or not Southeast will require repayment of all accrued unpaid interest prior to loan assumption. If such repayment is required, this should be disclosed.

The Office's ARM regulation requires a hypothetical example showing the effect of a 10 percentage point increase in the interest rate taken as rapidly as possible interest rates on monthly payments on an adjustable-rate mortgage loan that might be made by the bank. We are requiring, therefore, that banks offering payment-capped adjustable-rate mortgage plans make the same type of disclosure. Southeast should, therefore, expand the hypothetical example to cover 30 years. The Office also suggests that the example include an explanation of the differences among the several payment options shown.

(b) *Truth-in-Lending Act Disclosure*

No change required for purposes of PCM disclosure. The Office has not assessed the document's compliance with Regulation Z.

(c) *Notice of Interest Rate Adjustment*

To be consistent with notification requirements for ARMs, Southeast must include in the interest rate adjustment notice the amount of the monthly payment that would be required to amortize the outstanding loan balance fully at the new interest rate over the remaining loan term.

(d) *Notice of Monthly Payment Adjustment*

No change required in the notice of monthly payment change that was submitted on May 8, 1981. In your letter of June 18, 1981, you indicated that a revised notice of monthly payment change was being prepared. We wish to review the revised notice, and Southeast will be notified if any changes in that form will be necessary.

(e) *Annual Statement of Mortgage Loan Account*

The submitted documents indicate that Southeast will send an annual statement to Adjustable Mortgage borrowers. A copy of that annual statement should be submitted to the Office for review.

In various loan documents, the program is called an "Adjustable Mortgage Loan," an "Adjustable Rate Mortgage," and a "Payment-Capped Adjustable Rate Mortgage." It is suggested that when revising its documents, Southeast refer to the program by one name.

Southeast should change any other items in the disclosure notices and in other loan documents to reflect modifications in the program required by this Office.

If you have any questions regarding the contents of this letter, please feel free to contact Judith Naiman, Office of Customer and Community Programs, (202) 447-0934, or David Nebhut, Banking Research and Economic Analysis Division, (202) 447-1825, at this Office.

Charles E. Lord
Acting Comptroller of the Currency

* * *

201—June 29, 1981

Mr. Duane M. Swinton
Witherspoon, Kelley, Davenport & Toole, P.S.
11th Floor Old National Bank Building
Spokane, Washington 99201

Dear Mr. Swinton:

On May 1, 1981, Witherspoon, Kelley, Davenport & Toole submitted, on behalf of the Old National Bank of Washington, Spokane, Washington, documents related to its proposed Variable Rate Mortgage Loan (VRM) program, a payment-capped adjustable-rate mortgage plan, in accordance with Section 9 of 12 CFR Part 29.

Old National Bank of Washington's proposed VRM program provides for quarterly interest rate adjustments indexed to the monthly average of weekly auction rates on 6-month Treasury bills and payment amounts that are fixed for 3-year periods. The initial interest rate, used to set the original monthly payment level, is not necessarily based on the interest rate index. The bank plans, at its option, to set the initial interest rate equal to either the index rate, the lowest interest rate offered by competitors in the State of Washington on the last business day of the preceding week, or any rate between those two interest rates. The first interest rate adjustment occurs at the beginning of the second calendar quarter after the date of loan closing. At the time of the first interest rate adjustment and thereafter, the interest rate on a VRM is set at 3 percentage points over the 6-month Treasury bill rate, rounded to the nearest one-eighth of one percentage point. During the fixed-payment period, interest rate changes are implemented through changes in the rate of amortization. The plan places no limit on the magnitude of interest rate changes or on the amount of negative amortization that may occur during the life of the loan. Changes in monthly payments are limited to ±25% with two exceptions: the monthly payment will never be reduced below the original payment level, and if a payment change is less than 25%, the difference between the percentage change in the monthly payment and 25% may be carried over to succeeding payment adjustments, thereby allowing for future payment changes greater than 25%. Interest rate increases that occur during the last fixed-payment period may necessitate a balloon payment at the end of the loan term. The loan documents include a Call Option Rider that enables the bank to demand full payment of the loan at the end of 9 years. Old National Bank of Washington's program is described to prospective borrowers in a disclosure statement. The bank will send interest rate adjustment notices, payment change notices, and an annual statement to VRM borrowers.

The Office has completed its review of the proposed payment-capped adjustable-rate mortgage (PCM) plan submitted on behalf of the Old National Bank of Washington. As you know, the Office has reserved the right to modify or terminate a PCM plan if it is determined that the program does not adequately provide for repayment of the loans in a timely manner or if the program does not sufficiently protect borrowers against payment volatility.

The Office has general concerns that apply to a number of PCM plans that have been submitted for review. Because the Office believes that a period of experimentation with different versions of payment-capped adjustable-rate mortgage instruments will be valuable, it is not at this time requesting comprehensive changes in the plans to meet those concerns. Such concerns may be the subject of a future letter or may be addressed by future regulation. The Office does, however, have specific concerns with the Old National Bank of Washington's VRM plan and has determined that changes to meet those concerns must be made. Because of public interest in the types of mortgage instruments evolving in the market, this letter, except for any portions containing confidential, proprietary information, will be made available to the public.

General Concerns about PCMs

PCM plans combine periods of fixed monthly payment levels, subject to constrained payment level adjustments between periods, with unconstrained interest rate adjustments—a combination that will typically result in changes in the rate of amortization. The plans thus offer a trade-off between the short-run certainty of level monthly payments and the long-run uncertainty of the total cost of the loan, the size of payment adjustments at some later date, and the number of years it will take to pay off the loan. Indeed, under some interest rate scenarios such a loan can only be repaid within the stated maturity by either a significant increase in the monthly payment level or a large balloon payment.

Payment-capped mortgage instruments can be designed to limit the possibility of substantial amounts of negative amortization. Under the submitted programs, unlimited increases in the outstanding loan balance may occur due to infrequent payment adjustments, low payment caps that bind over several adjustment periods, and unlimited interest rate increases.

The likelihood of significant negative amortization may be increased by the practice of setting an initial payment below that required to amortize fully the loan at the interest rate based on the then current index value. The Office is concerned that borrowers might misinterpret the low initial monthly payments as representative of a "bargain" interest rate. While the monthly payment level may be equal to or below that required for comparable loans made under other mortgage programs on the market, the interest rate on the loan after the first rate adjustment is not a below-market rate. It is important that the lender clearly disclose the interest rate implied by the index and alert the borrower to the likelihood of negative amortization occurring early in the loan term.

Loans calling for infrequent payment adjustments and incorporating small payment caps embody a "buy-now pay-later" philosophy that is potentially misleading. If the payment caps are binding for several consecutive payment adjustments, the monthly payment may be well below the amount required to amortize fully the loan. In such a case it is important that the borrower be made aware of the continual additions to

the outstanding loan balance and the current interest rate on the loan

The Office's ARM regulation limits the amount of negative amortization that may occur between payment adjustments to 1% of the principal outstanding at the beginning of that fixed-payment period times the number of 6-month periods between payment adjustments. Additionally, at least every five years, the monthly payment must be reset at a level sufficient to amortize the loan at the then current interest rate over the remainder of the loan term.

There are a number of other ways in which negative amortization can be addressed. Increasing the frequency of payment adjustments and the size of payment caps, removing the caps at some point in the loan term, and limiting interest rate changes either explicitly or through the selection of a fairly stable interest rate index, would reduce the likelihood of substantial increases in the outstanding loan balance. Alternatively, in recognition of the increased riskiness of PCMs, lenders may choose to offer them only to borrowers likely to experience steady increases in income or to borrowers likely to sell their houses and repay their loans well before the loans reach maturity.

Lenders have an obligation to assure that borrowers are given sufficient information to provide them an opportunity to understand both the mechanics of the loan and its implications, *e.g.*, the potential for negative amortization and its effect on the homeowner's accumulation of equity, the potential for a balloon payment at the end of the loan term, and the potential effects of unconstrained interest rate adjustments. When information is disseminated through brochures, disclosure statements, and periodic documentation of the loan's history, the lender has an obligation to make sure that such documents are accurate, easily understood, and comprehensive.

Specific Changes in the Old National Bank of Washington's VRM Program

Once the following changes have been implemented, the bank may begin lending under its VRM program. Modified documents reflecting such changes should be submitted to this Office.

1. *Floor on Monthly Payments*

The Old National Bank of Washington's VRM program contains a provision that the monthly payment level will never be reduced below the original monthly payment. Such a payment floor, when in effect, would force a borrower to repay principal ahead of schedule. The Office does not believe that the borrower should be put in a position of forced prepayment. The decision to reduce the loan faster than scheduled should be left to the borrower.

The Office, therefore, requires that the payment floor be removed from the program and that any restrictions on the size of payment increases and decreases be symmetrical. Carryovers of unused payment changes should apply to both payment increases and decreases. The bank may, of course, encourage borrowers to periodically prepay by maintaining the then current payment level whenever the payment level required to amortize fully the loan falls below the initial monthly payment level.

2. *Initial Interest Rate and Calculation of the First Monthly Payment*

The Old National Bank of Washington plans to offer VRMs with an initial interest rate equal to either the index rate, the lowest interest rate offered by competitors in the State of Washington on the last business day of the preceding week, or any rate between those two interest rates. The bank believes that this range of starting interest rates will enable it to avoid a significant increase in the interest rate at the first rate-change date and thereby prevent excessive negative amortization. The proposed formula for setting the initial interest rate, however, allows for the possibility of a significant increase in the interest rate at the first rate-change date since the interest rate at the first rate-change date will be set at three percentage points above the index rate. This method of setting the initial interest rate also creates the possibility of significant negative amortization early in the loan term, unless the index rate has dropped sharply.

Because the initial rate applies only until the beginning of the second calendar quarter following loan closing, it does not reduce the cost of the loan in any meaningful way. Further, the Office is concerned that a low initial rate—and the publicizing of the loan as carrying that rate—may lead borrowers into erroneously believing that the interest rate on the PCM is below market rates. This belief may be true at the time of loan origination, but the loan rate will not be below market after the first rate adjustment.

The Office is, therefore, requiring the Old National Bank of Washington to base the initial interest rate on the then current index value in the same manner as it determines subsequent interest rates. If the bank wishes to set the initial monthly payment below the level necessary to amortize fully the loan, it may do so but must disclose the fully amortizing payment level.

3. *Disclosure*

The Old National Bank of Washington has prepared four information documents to be given to its VRM borrowers. The Office has reviewed those documents for accuracy and to determine the extent to which they are consistent with the spirit of the disclosure requirements specified by the Office for interest-rate capped adjustable-rate mortgages in 12 CFR 29.8 (a) and (b). The Office has concluded that certain changes should be made either to address the general concerns described above or to conform to the modifications called for by our specific concerns.

(a) *Disclosure Notice and Information*

All references to the initial interest rate and the current index rate in both the general and specific sections of the disclosure notice should be modified to describe accurately the changes made in response to this letter.

The bank should expand the section explaining negative amortization. The Office suggests that the section indicate that negative amortization

may also occur when the 25% payment cap is binding and the adjusted monthly payment is insufficient to fully amortize the loan.

The Office is concerned that the carrying over of unused portions of the 25% payment change may result in excessively volatile payments. No change in that aspect of the program need be made at this time, but we are requiring that the disclosure of this aspect of the program be expanded and distinguished from the other rules dealing with changes in monthly payments. As currently written, this important feature of the program is inadequately explained. A separate section should explain this carryover provision and include numerical examples showing increases in monthly payments, decreases in monthly payments, and a decrease followed by the maximum increase allowable at the next payment adjustment. The section should also include a notice that payment changes well in excess of 25% may occur under certain interest rate scenarios.

The description of the monthly payment adjustment limitations should be amended to reflect the Office's requirement that the floor on monthly payments be eliminated. The bank may encourage borrowers to maintain a higher monthly payment level than may be implied by the current interest rate at the time of payment adjustment. Such payments, however, should be at the borrower's option.

The section of the disclosure notice entitled "Effect of Increase/Decrease in Index Rate on Monthly Payment" implies that if the interest rate in effect at the 36-month anniversary is the same as the original interest rate, the monthly payment will not change at that time. That is incorrect. If at any time during the 36-month fixed-payment period the interest rate on the loan differs from the interest rate used to set the monthly payment, it is likely that the monthly payment will be adjusted on the 36-month anniversary. This section should be revised to explain that situation.

It is unclear whether the Old National Bank of Washington will require repayment of all accrued unpaid interest prior to loan assumption. If such repayment is required, this should be disclosed. If the bank may reset any of the loan terms at the time of assumption, this should also be disclosed.

The Office's ARM regulation requires a hypothetical example showing the impact of steadily rising interest rates on monthly payments on an adjustable-rate mortgage loan that might be made by the bank. We are requiring, therefore, that banks offering payment-capped adjustable-rate mortgage plans make the same type of disclosure. That is, the bank must provide an example of a PCM with an interest rate that increases 2 percentage points per year (½ percentage point per quarter) for 5 years and remains 10 percentage points over the initial interest rate for the remainder of the loan term. The example should be simple and clear and should specify hypothetical installment payment amounts (reflecting the 25% periodic payment adjustment cap and the fact that the initial payment may differ from a fully amortizing level) and the principal outstanding at each payment adjustment.

The Old National Bank of Washington includes a Call Option Rider in the loan documents. At its option, the bank may call the loan at the end of 9 years. The Office's adjustable-rate mortgage regulation specifies a disclosure statement that must be in or affixed to the loan application and the loan note for mortgage loans that are subject to payment on demand (12 CFR 29.8 (c)). The Office is therefore requiring that the Old National Bank of Washington comply with that section of the ARM regulation.

(b) *Truth-in-Lending Act Disclosure*

No change required for purposes of PCM disclosure. The Office has not assessed the document's compliance with Regulation Z.

(c) *Notice of Interest Rate Adjustment*

To be consistent with notification requirements for ARMs, the Old National Bank of Washington must include in the interest rate adjustment notice the amount of the monthly payment that would be required to amortize the outstanding loan balance fully at the new interest rate over the remaining loan term.

(d) *Notice of Monthly Payment Adjustment*

The bank should include in the notice of monthly payment adjustment the monthly payment amount that would be required to amortize the loan fully, *i.e.*, assuming no limit on payment adjustments. The notice should eliminate the reference to the initial monthly payment as a floor on the monthly payment level. It is suggested that the notice also indicate the escrow items included in the monthly payment.

(e) *Annual Statement of Mortgage Loan Account*

The disclosure notice indicates that the Old National Bank of Washington will send VRM borrowers an annual statement. The bank should submit the statement to the Office for review.

The Old National Bank of Washington should change any other items in the disclosure notices and in other loan documents to reflect modifications in the program required by this Office.

If you have any questions regarding the contents of this letter, please feel free to contact Judith Naiman, Office of Customer and Community Programs (202) 447-0934, or David Nebhut, Banking Research and Economic Analysis Division (202) 447-1825, at this Office.

Charles E. Lord
Acting Comptroller of the Currency

202—June 25, 1981

Mr. H. J. Runnion, Jr.
Executive Vice President
Wachovia Bank and Trust Company, N.A.
Post Office Box 3099
Winston-Salem, North Carolina 27102

Dear Mr. Runnion:

On April 1, 1981, Wachovia Bank submitted documents related to its Adjustable Mortgage program, a payment-capped adjustable-rate mortgage plan, in accordance with Section 9 of 12 CFR Part 29.

Wachovia's Adjustable Mortgage program provides for quarterly interest rate adjustments indexed to specified auction rates for 13-week Treasury bills and payment amounts that are fixed for 5-year periods. The initial interest rate, used to set the original monthly payment level, is not necessarily based on the interest rate index. This initial interest rate applies only for the balance of the calendar quarter during which the loan is made. At the time of the first interest rate adjustment and thereafter, the interest rate on an Adjustable Mortgage is set at 3 percentage points over the 13-week Treasury bill rate, rounded to the nearest one-eighth of one percentage point. During the fixed-payment period interest rate changes are implemented through changes in the rate of amortization. The plan places no limit on the magnitude of interest rate changes or on the amount of negative amortization that may occur during the life of the loan. Changes in monthly payments are limited to $\pm 25\%$ with two exceptions: the monthly payment will never be reduced below the original payment level, and the 25% payment change limitation does not apply to the final payment adjustment. Interest rate increases that occur during the last fixed-payment period may necessitate a balloon payment at the end of the loan term. Wachovia's program is described to prospective borrowers in a brochure and a longer disclosure statement. Wachovia sends interest rate adjustment notices, payment change notices, and annual statements of mortgage loan accounts to Adjustable Mortgage borrowers.

The Office has completed its review of the payment-capped adjustable-rate mortgage (PCM) plan submitted by Wachovia. As you know, the Office has reserved the right to modify or terminate a PCM plan if it is determined that the program does not adequately provide for repayment of the loans in a timely manner or if the program does not sufficiently protect borrowers against payment volatility.

The Office has general concerns that apply to a number of PCM plans that have been submitted for review. Because the Office believes that a period of experimentation with different versions of payment-capped adjustable-rate mortgage instruments will be valuable, it is not at this time requesting comprehensive changes in the plans to meet those concerns. Such concerns may be the subject of a future letter or may be addressed by future regulation. The Office does, however, have specific concerns with Wachovia's Adjustable Mortgage plan and has determined that changes to meet those concerns must be made. Because of public interest in the types of mortgage instruments evolving in the market, this letter, except for any portions containing confidential, proprietary information, will be made available to the public.

General Concerns about PCMs

PCM plans combine periods of fixed monthly payment levels, subject to constrained payment level adjustments between periods, with unconstrained interest rate adjustments—a combination that will typically result in changes in the rate of amortization. The plans thus offer a trade-off between the short-run certainty of level monthly payments and the long-run uncertainty of the total cost of the loan, the size of payment adjustments at some later date, and the number of years it will take to pay off the loan. Indeed, under some interest rate scenarios such a loan can only be repaid within the stated maturity by either a significant increase in the monthly payment level or a large balloon payment.

Payment-capped mortgage instruments can be designed to limit the possibility of substantial amounts of negative amortization. Under the submitted programs, unlimited increases in the outstanding loan balance may occur due to infrequent payment adjustments, low payment caps that bind over several adjustment periods, and unlimited interest rate increases.

The likelihood of significant negative amortization may be increased by the practice of setting an initial payment below that required to amortize fully the loan at the interest rate based on the then current index value. The Office is concerned that borrowers might misinterpret the low initial monthly payments as representative of a "bargain" interest rate. While the monthly payment level may be equal to or below that required for comparable loans made under other mortgage programs on the market, the interest rate on the loan after the first rate adjustment is not a below-market rate. It is important that the lender clearly disclose the interest rate implied by the index and alert the borrower to the likelihood of negative amortization occurring early in the loan term.

Loans calling for infrequent payment adjustments and incorporating small payment caps embody a "buy-now pay-later" philosophy that is potentially misleading. If the payment caps are binding for several consecutive payment adjustments, the monthly payment may be well below the amount required to amortize fully the loan. In such a case it is important that the borrower be made aware of the continual additions to the outstanding loan balance and the current interest rate on the loan.

The Office's ARM regulation limits the amount of negative amortization that may occur between payment adjustments to 1% of the principal outstanding at the beginning of that fixed-payment period times the number of 6-month periods between payment adjustments. Additionally, at least every five years, the monthly payment must be reset at a level sufficient to amortize the loan at the then current interest rate over the remainder of the loan term.

There are a number of other ways in which negative amortization can be addressed. Increasing the frequency of payment adjustments and the size of pay-

ment caps, removing the caps at some point in the loan term, and limiting interest rate changes either explicitly or through the selection of a fairly stable interest rate index, would reduce the likelihood of substantial increases in the outstanding loan balance. Alternatively, in recognition of the increased riskiness of PCMs, lenders may choose to offer them only to borrowers likely to experience steady increases in income or to borrowers likely to sell their houses and repay their loans well before the loans reach maturity.

Lenders have an obligation to assure that borrowers are given sufficient information to provide them an opportunity to understand both the mechanics of the loan and its implications, *e.g.*, the potential for negative amortization and its effect on the homeowner's accumulation of equity, the potential for a balloon payment at the end of the loan term, and the potential effects of unconstrained interest rate adjustments. When information is disseminated through brochures, disclosure statements, and periodic documentation of the loan's history, the lender has an obligation to make sure that such documents are accurate, easily understood, and comprehensive.

Specific Changes in Wachovia's Program

Wachovia made loans under its Adjustable Mortgage program before March 27, 1981. Therefore, the Office is requiring that the following changes be implemented within 120 days. Modified documents reflecting such changes should be submitted to this Office for review.

1. *Floor on Monthly Payments*

Wachovia's Adjustable Mortgage program contains a provision that the monthly payment level will never be reduced below the original monthly payment. Such a payment floor, when in effect, would force a borrower to repay principal ahead of schedule. The Office does not believe that the borrower should be put in a position of forced prepayment. The decision to reduce the loan faster than scheduled should be left to the borrower.

The Office, therefore, requires that the payment floor be removed from the program and that any restrictions on the size of payment increases and decreases be symmetrical. The bank may, of course, encourage borrowers to periodically prepay by maintaining the then current payment level whenever the payment level required to amortize fully the loan falls below the initial monthly payment level.

2. *Initial Interest Rate and Calculation of the First Monthly Payment*

In periods of high interest rates, Wachovia intends to set the initial interest rate, used to set the initial payment level, below that interest rate implied by the current index value. Because this initial rate applies only for the remainder of the calendar quarter in which the loan is originated, it does not reduce the cost of the loan in any meaningful way. Unless interest rates drop sharply, there will be significant amounts of negative amortization early in the loan term. The Office is concerned that a low initial rate—and the publicizing of the loan as carrying that rate—may lead borrowers into erroneously believing that the interest rate on the PCM is below market rates. This belief may be true at the time of loan origination, but the loan rate will not be below market after the first rate adjustment.

The Office is, therefore, requiring Wachovia to base the initial interest rate on the then current index value in the same manner as it determines subsequent interest rates. If the bank wishes to set the initial monthly payment below the level necessary to amortize fully the loan, it may do so but must disclose the fully amortizing payment level.

3. *Disclosure*

Wachovia has prepared 6 information documents to be given to its Adjustable Mortgage borrowers. The Office has reviewed those documents for accuracy and to determine whether they are consistent with the spirit of the disclosure requirements specified for interest-rate capped adjustable-rate mortgages by the Office in 12 CFR 29.8 (a) and (b). Although the documents are comprehensive, the Office has concluded that certain changes should be made either to address the general concerns described above or to conform to the modifications called for by our specific concerns.

(a) *Question and Answer Brochure*

The Office's ARM regulation requires that the full shopping disclosure be provided to borrowers on the earlier of the date on which the bank first provides written information concerning residential mortgage loans available from the bank or provides a loan application to the prospective borrower. The Office is requiring that Wachovia meet that requirement and provide the full shopping disclosure in conjunction with the question and answer brochure.

Certain statements in the brochure are inaccurate or incomplete. They are as follows:

The answer to question 5 states that the maximum payment adjustment is 25%. It should be stated that the 25% limit on payment changes does not apply to the final payment adjustment.

The answer to question 8 should omit the reference to the initial payment level as a floor on monthly payments.

Questions 10, 11, 12, 14, 15, and 20 refer to an accrual rate. It is suggested that the term accrual rate be replaced with the term interest rate. Similarly, the Office suggests that in the answer to question 1 the term adjustable rate be replaced with the term interest rate.

The answer to question 20 is incomplete. A rising interest rate is not a necessary condition for negative amortization. Negative amortization will also occur when the interest rate is unchanged but the monthly payment is based on an interest rate that is below the interest rate on the loan. The answer should point out this possibility.

The answer to question 21 may be read to suggest that Wachovia guarantees to refinance any outstanding loan balance at the end of the loan term. No statement guaranteeing refinancing appears in any other loan documents, however. The answer should indicate that refinancing will be subject to the bank's discretion.

The answer to question 21 also states that an outstanding loan balance at the end of the loan term would be an "unusual" occurrence. Such a characterization may be misleading.

Answers to other questions should be amended as necessary to reflect the changes required in Wachovia's Adjustable Mortgage program.

(b) *Disclosure Notice and Information*

All references to the initial interest rate and the current index rate in both the general and specific sections of the disclosure notice should be modified to describe accurately the changes made in response to this letter.

The bank should add a section explaining negative amortization, *i.e.*, what it is, how it occurs, how substantial it may be under adverse interest rate conditions, and what implications it may have for subsequent payment increases, and a possible balloon payment. The bank should explain the meaning of the term balloon payment. This section should appear early in the disclosure statement.

The description of the monthly payment adjustment limitations should be amended to reflect the Office's requirement that the floor on monthly payments be eliminated. The bank may encourage borrowers to maintain a higher monthly payment level than may be implied by the then current interest rate at the time of payment adjustment. Such payments, however, should be at the borrower's option.

The section of the disclosure notice entitled "Effect of Increase/Decrease in Index Rate on Monthly Payment" implies that if the interest rate in effect at the 60-month anniversary is the same as the original interest rate, the monthly payment will not change at that time. That is incorrect. If at any time during the 60-month fixed-payment period the interest rate on the loan differs from the interest rate used to set the monthly payment, it is likely that the monthly payment will be adjusted on the 60-month anniversary. This section should be revised to explain that situation.

It is unclear whether Wachovia requires repayment of all accrued unpaid interest prior to loan assumption. If such repayment is required, this should be disclosed. If the bank may reset any of the loan terms at the time of assumption, this should also be disclosed.

The Office's ARM regulation requires a hypothetical example showing the impact of steadily rising interest rates on monthly payments on an adjustable rate mortgage loan that might be made by the bank. We are requiring, therefore, that banks offering payment-capped adjustable-rate mortgage plans make the same type of disclosure. That is, the bank must provide an example of a PCM with an interest rate that increases 2 percentage points per year (½ percentage point per quarter) for 5 years and remains 10 percentage points over the initial interest rate for the remainder of the loan term. The example should be simple and clear and should specify hypothetical installment payment amounts (reflecting the 25% periodic payment adjustment cap and the fact that the initial payment may differ from a fully amortizing level) and the principal outstanding at each payment adjustment.

(c) *Truth-in-Lending Act Disclosure*

No change required for purposes of PCM disclosure. The Office has not assessed the document's compliance with Regulation Z.

(d) *Notice of Interest Rate Adjustment*

To be consistent with notification requirements for ARMs, Wachovia must include in the interest rate adjustment notice the amount of the monthly payment that would be required to amortize the outstanding loan balance fully at the new interest rate over the remaining loan term.

The notice refers to an addendum to be found on its reverse side, but no addendum appears on the reverse side of the notice submitted to the Office. Wachovia should clarify this reference in modified documents submitted to this Office.

(e) *Notice of Monthly Payment Adjustment*

The bank should include in the notice of monthly payment adjustment the monthly payment amount that would be required to amortize the loan fully, *i.e.*, assuming no 25% limit on payment adjustments. The notice should eliminate the reference to the initial monthly payment as a floor on the monthly payment level. It is suggested that the notice also indicate the escrow items included in the monthly payment.

(f) *Annual Statement of Mortgage Loan Account*

No change required.

The brochure calls the program an "Adjustable Mortgage". The disclosure notice refers to an "Adjustable Mortgage" and a "Variable Rate Mortgage". The notices of interest rate adjustment and monthly payment adjustment refer to a "Variable Rate Mortgage Loan". We suggest that when revising its documents, Wachovia refer to its program by one name.

Wachovia should change any other items in the disclosure notices and in other loan documents to reflect modifications in the program required by this Office.

If you have any questions regarding the contents of this letter, please feel free to contact Judith Naiman, Office of Customer and Community Programs, (202) 447-0934, or David Nebhut, Banking Research and

Economic Analysis Division, (202) 447-1825, at this Office.

Charles E. Lord
Acting Comptroller of the Currency

* * *

203—July 7, 1981

This is in response to your letter of October 22, 1979, addressed to this Office. I apologize for the inexcusable delay in this response. In your letter you present three separate questions relating to reverse repurchase transactions. You have defined these transactions in your letter as follows:

> *Reverse Repurchase Transactions*
>
> In a reverse repurchase transaction, a bank's customer, usually a dealer, sells third-party paper to the bank with a commitment to repurchase the paper at the same price plus a stipulated interest charge at the end of a given time period. The total price, including the bank's charge, at which the customer is obligated to repurchase the paper is either equal to or less than the market price for the paper at the time of purchase by the bank. The period during which the paper is held by the bank is very short, often overnight. Although such transactions are a means of financing the customer, the bank does make an analysis of the paper for appropriateness for holding by the bank. The paper is actually delivered to the bank or an agent of the bank and held by the bank or under the bank's control during the transactional period.

You have stated that the subject paper of a reverse repurchase transaction may be short-term commercial paper not arising from the purchase of commodities. In the first situation you have presented, this paper is third party commercial paper of not more than six months maturity from the date of purchase by the bank. Your first question is whether the customer's repurchase obligation to the bank qualifies for the partial lending limit exception provided in 12 U.S.C. § 84(4). Exception 4 to 12 U.S.C. § 84 provides that the 10 percent limitation for advances to any one customer shall be subject to the following partial exception:

> (4) Obligations as indorser or guarantor of notes, other than commercial or business paper excepted under (2) hereof, having a maturity of not more than 6 months, and owned by the person, corporation, association, or co-partnership indorsing and negotiating the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.
> 12 U.S.C. § 84(4)

As you have noted, the Interpretive Ruling on this section, I.R. 7.1540, 12 C.F.R. § 7.1540 (1980), states that this exception

> applies not only to endorsement and guaranties appearing on the instruments themselves, but also applies to guaranties or *repurchase agreements embodied in separate documents*, provided the notes covered thereby are adequately identified.
> I.R. 7.1540(c) (emphasis added)

However, it is my opinion that exception 4 to 12 U.S.C. § 84 for obligations as guarantor of notes applies only where the bank is looking to the guarantor as secondarily liable. In transactions falling within exception 4, the bank will be looking primarily to an original debtor and to the guarantor only secondarily. In the transaction you have described, the bank will be looking to the repurchasing customer as the primary obligor. (See discussion below of obligation of issuer of paper.) Accordingly, the exception provided in 12 U.S.C. § 84(4) would not be available in this situation.

The second question you have presented is whether the obligation of an issuer of such commercial paper should be considered an obligation for 12 U.S.C. § 84 purposes where the bank's customer with the commitment to repurchase the paper is a party other than the issuer.

Where a bank purchases third party paper from a seller who agrees to repurchase it, such transaction represents an extension of credit to the seller of the paper by the bank which is subject to the applicable lending limit. When the transaction is viewed in this manner, as an extension of credit rather than an actual sale of the third party paper, the paper may be properly considered as collateral security for the loan. Accordingly, the obligation of the issuer on the paper need not be considered an obligation to the bank subject to the lending limits of 12 U.S.C. § 84. This result occurs because the bank is actually looking primarily to its customer for repayment of the "loan" and not to the obligation of the issuer on the paper.

The final question you have presented concerns reverse repurchase transactions involving eligible bankers' acceptances. You have asked whether the repurchase obligation of a bank's customer may be considered an exempt obligation for section 84 lending limit purposes where the subject of the transaction is eligible bankers' acceptances accepted by another bank.

An "eligible" banker's acceptance is one which meets all the requirements of 12 U.S.C. §§ 372 or 373 and is eligible for discount by a Federal Reserve Bank. Under 12 U.S.C. § 84(5), obligations in the form of eligible bankers' acceptances of other banks are not subject to the lending limits of section 84.

In the situation you have presented, the customer's obligation is not in the form of bankers' acceptances but rather is in the form of a repurchase agreement. As explained above, this agreement constitutes a loan to the customer with the bankers' acceptances as collateral security for the loan. The bank does not look primarily to the bankers' acceptances for repayment; it looks instead to the customer's agreement to repurchase the bankers' acceptances. The terms of the repurchase obligation may be quite different from the terms of the underlying bankers' acceptances. In fact, as you have stated in your letter, the time period be-

tween the purchase by the bank and the customer's obligation to repurchase is very short, often only overnight. The bankers' acceptances which are the subject of the repurchase transaction may not mature for several weeks. In such a situation, the bank's source of repayment is clearly expected to be the obligation of the customer to repurchase the bankers' acceptances. As such, exception 5 to the lending limit of 12 U.S.C. § 84 would be inapplicable. Accordingly, the lending limit of 12 U.S.C. § 84 would apply to the customer's repurchase obligation to the bank.

I trust that the information in this letter will prove helpful to you in making decisions in this area.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

204—June 17, 1981

This is in response to your letter to Mr. Richard V. Fitzgerald, concerning the ability of a national bank to make a shared appreciation mortgage (SAM).

As outlined in your letter, the bank proposes a loan with a term of 10 years. At the end of this 10 year period, or at the sale or transfer of the encumbered property prior to the expiration of the 10 year term, the borrower would make a payment to the bank equal to a stated percentage share of the net appreciation of the property. The principal amount of such a loan would not exceed 90% of the appraised value of the improved real estate, unless it was otherwise properly insured as required by 12 U.S.C. § 371. Interest would be charged at a stated fixed rate below the market rate. In order to further reduce monthly payments to an attractive level, the bank proposes computing monthly payments on the basis of an amortization term of 40 years, even though the SAM itself would mature in 10 years.

At present, a 33⅓% participation in net appreciation is being contemplated by the bank with a maximum interest rate of 45%, including both fixed and contingent interest. Net appreciation is defined by you as "the market value of the property as determined by sale's price or appraisal . . . minus (1) the cost of the encumbered property to the borrower, (2) the cost of the capital improvements made by the borrower . . . ; and (3) the cost of any appraisal used to determine the market value of the property." Alternatively, the bank could participate in the appreciation based on the gross appreciated value. The bank also proposes making disclosures similar to those required for variable rate mortgages under Regulation Z, 12 C.F.R. § 226.8-(b)(3) and for SAMs under the Federal Home Loan Bank Board's proposed regulations. 45 Fed. Reg. 66801 (Oct. 8, 1980).

In addition to requesting the views of this Office on the permissibility of such a transaction for a national bank, you request this Office's opinion on whether a bank can close such a loan in its own name and then warehouse it for a period of time prior to transferring it to a private investor or simply close the loan in the bank's name as agent for the investor and, immediately upon closing, transfer the loan to such investor.

As you state in your letter, 12 U.S.C. § 29 sets forth the purposes for which a national bank may "purchase, hold and convey real estate." That section is intended, *inter alia*, to prevent national banks from speculating on real estate by prohibiting the holding of real estate except property used in the bank's business or taken in satisfaction of previously contracted debts and held for limited periods. Therefore, if the making of a SAM is considered to be the purchase, holding, or conveyance of real estate, a national bank would be prohibited from engaging in such a transaction.

It is my opinion that a SAM as outlined in your letter is not the purchase, holding, or conveyance of real estate within the meaning of 12 U.S.C. § 29. In the proposed transaction, the bank is not obtaining a present or future possessory interest in real property. Instead the bank expects to receive an amount of money *as interest*. The amount of money to be received is measured as a contingent share of the expected future appreciation of the encumbered property. More important, the bank is not risking, in the absence of default, loss on the principal of its loan even if the property should decline in value. This Office has long held that a national bank may take an amount of money measured as a share in the profits of an enterprise in lieu of or in addition to the interest it receives on a loan, so long as repayment of loan principal is contractually assured. *See* Interpretive Ruling 7.7312, 12 C.F.R. § 7.7312. The fact that passive ownership of real property by the bank's customer is involved here rather than the active conduct of a business enterprise is immaterial. The proposed transaction is merely a contract between the bank and the mortgagor in which the mortgagor agrees to pay, at a future date, an amount of interest which is determined by independent outside factors, *i.e.*, the increase in the value of the property at a given date or event.

You state that the bank is considering basing its share in the increased value of the property on gross appreciation as opposed to net appreciation and asks for our comment on this possibility. In my opinion the bank may choose either one so long as *full* disclosure is made to the borrower.

Your proposed SAM contemplates an amortization period of 40 years with a balloon payment no later than at the end of the first ten years.

Under 12 U.S.C. § 371

> If any such loan exceeds 75 per centum of the appraised value of the real estate or if the real estate is improved with a one- to four-family dwelling, installment payments shall be required which are sufficient to amortize the entire principal of the loan within a period of *not more than thirty* years.
> 12 U.S.C. § 371(a)(1) (emphasis added).

When amortization is required under 12 U.S.C. § 371, "payments may be based on an amortization *schedule of not more than 30 years, even though the*

term of the loan may be less than 30 years." I.R. 7.2125(c), 12 C.F.R. § 7.2125(c) (1980) (emphasis added). Your proposed 40 year amortization payment program raises issues with respect to the amortization requirements of 12 U.S.C. § 371 and I.R. 7.2125(c). This Office has been re-examining the concept of amortization in the context of adjustable rate mortgage and graduated payment mortgage lending by national banks. At this point, I am not prepared to say that the 40-year amortization schedule with a 10-year maturity complies with the statutory amortization requirement. You also contemplate under your SAM program that the bank might guarantee to refinance the loan when the 10-year maturity is reached. If the bank does issue this type of guarantee, and the combined original and renewal term of the loan exceeds 30 years, this, too, would raise serious issues concerning compliance with the statutory amortization requirement.

You have requested this Office's opinion on whether a bank can close a SAM in its name and then warehouse it for a period of 90 days prior to transferring it to a permanent investor, or simply close the loan in the bank's name as an agent for the investor and, immediately upon closing, transfer such loan to the investor.

Since a SAM should be treated in the same manner as a conventional mortgage, all rules and regulations applicable to conventional mortgages are also applicable to SAMs. Under Interpretive Ruling 7.7379, 12 C.F.R. § 7.7379 (1980), a "national bank may act as agent in warehousing and servicing of mortgage and other loans, either directly or through a subsidiary corporation." Therefore, it may close them in its own name, hold such loans for 90 days, and then resell them to a permanent investor. However, the situation of a national bank closing a loan as an agent for an investor and, upon closing, transferring the loan to such investor, poses a more difficult question.

Section 92 of Title 12 of the United States Code has been read to implicitly prohibit certain insurance and real estate loan brokerage activities of national banks, except in the limited circumstances spelled out in the statute. That statute, which expressly authorizes national banks to engage in the business of selling insurance and procuring real estate loans for others if the banks are located in towns of 5,000 or fewer people, was enacted in 1916, at which time national banks had very narrowly defined powers in making real estate loans. It may be argued that this affirmative grant of authority to act as broker in procuring real estate loans for others, then, was at least in part necessary to help these smaller communities meet their credit needs by providing additional avenues for procuring real estate loans.

Since 1916, however, Congress has amended Section 24 of the Federal Reserve Act, 12 U.S.C. § 371, to permit national banks to broaden their real estate lending activities, and the current version of 12 U.S.C. § 371 provides wide latitude in the real estate lending authority of national banks. Paragraph (a)(3) of the current version of 12 U.S.C. § 371 expressly recognizes the power of national banks to enter into contracts with financially responsible lenders and others whereby these other parties agree to purchase real estate loans by "advanc[ing] to the [national banking] association within sixty months from the date of the making of such loan the full amount of the loan *to be made* by the association upon the security of real estate" (emphasis supplied). In addition, 12 U.S.C. § 24 (Seventh) expressly authorizes national banks to carry on the banking business "by discounting and negotiating promissory notes . . . and other evidences of indebtedness . . . ." Thus, wholly apart from the powers granted by 12 U.S.C. § 92 to national banks located in small towns, these other statutes, it could be argued, impliedly permit national banks to make real estate loans for their own account or the account of others and to transfer these loans, by negotiation or otherwise, pursuant to pre-existing contractual commitments.

Despite these doubts raised as to the continuing vitality of the provisions of 12 U.S.C. § 92 that relate to real estate loan brokerage, I call your attention to a recent decision of the Federal District Court in the Southern District of New York, which held that the brokerage activities of a Tennessee national bank in securing commitments for construction financing and permanent financing were not authorized by 12 U.S.C. § 24 (Seventh) and were implicitly prohibited by 12 U.S.C. § 92. The court also held that a state broker's license is required to engage in such activities. The specific facts involved are not entirely clear from the decision. It appears, however, that the bank was acting as agent for the borrower and that there was an agreement to provide such services for a fee. It also appears that the bank representatives spent considerable time in New York negotiating the commitments from a New York life insurance company and New York bank. *See Guarantee Mortgage Co.* v. *Z.I.D. Associates, Inc.*, 80 CIV. 1154 (VLB) (S.D.N.Y. July 21, 1980).

I trust this has been responsive to your inquiry.

John E. Shockey
Chief Counsel

* * *

205—May 21, 1981

This is in response to your inquiry regarding Eurodollar deposits, which the Eighth National Bank Region has referred to me for reply. Specifically, you noted that, for the purposes of Regulation D, certain deposits in the foreign branches of U.S. banks may be regarded as "borrowings." In your opinion, this should not automatically result in the conclusion that, also for the purposes of 12 U.S.C. § 82, the funds are "borrowings" which must be included within the overall limitations of that provision. You inquired whether we concur with your opinion.

Regulation D, 12 C.F.R. Part 204, as revised, requires certain depository institutions to maintain reserves on certain types of deposits. *See* 12 C.F.R. § 204.1, 45 *Federal Register* 56009, 56018 (August 22, 1980). The Regulation defines the term "deposit" as well as those categories of deposits that are subject to the reserve requirements. The Regulation exempts

however, from the reserve requirements "any deposit that is payable only at an Office located outside United States." 12 C.F.R. § 204.1(c)(5), *id.* at 56019.

Due to the Second Exception of 12 U.S.C. § 82, deposits are not regarded as "borrowings" for the purposes of that provision. In the past, this Office has frequently found it useful to refer to the Regulation D definition of "deposit" in determining the scope of the Second Exception of Section 82. However, since the objectives and the purposes of these two provisions are different, their terms are not necessarily coextensive in every respect. Thus, it is possible that a transaction which does not fall within the Regulation D definition of "deposit," 12 C.F.R. § 204.2(a)(1), may still be a *bona fide* deposit which should be included within the Second Exception of Section 82. This determination must, however, be made on a case-by-case basis in light of all the available facts.

I understand that in the subject transactions the *** (bank) accepts Eurodollar time deposits at its Cayman Islands branch. The depositors are offshore sources such as corporations and banks. The time deposits are booked in the Cayman branch and in the ledgers for that branch located in the U.S. home office. The deposits are payable either at the Cayman branch or at the bank's U.S. home office, at the customer's option. The bank stipulates to the depositor that it does not guarantee payment at the U.S. home office. Customers are informed that the deposits in the Cayman branch bear "country risk" until they are paid. As a factual matter most deposits are paid at the U.S. home office. Payment at the home office occurs only after the funds are transferred from the books of the Cayman branch.

I do not believe it is necessary to decide whether the subject deposits are "deposits" subject to Federal Reserve Regulations D or Q in order to answer the 12 U.S.C. § 82 question. The subject deposits appear to be "deposits" in the true sense of the word. They are placed in the custody of the bank for a specified time and earn interest at a stated rate for that time or until withdrawn by the depositor. In my opinion the subject deposits are "deposits" as that word is used in the Second Exception to 12 U.S.C. § 82 and therefore excepted from the provision of that statute. This opinion is based on the facts as stated above. Different or additional facts may require a different conclusion.

Paul M. Homan
Senior Deputy Comptroller
for Bank Supervision

* * *

206—August 11, 1981

This is in response to your letter of April 10, 1981, to Billy L. Dowdle, Regional Director for Trust Examinations. That letter, which requests reconsideration of a finding that the *** ("Bank") is in violation of 12 C.F.R. § 9.11(a), has been forwarded to me for response.

An examination of the Bank's trust department was conducted as of June 4, 1980. The Report of Examination stated that the Bank has invested funds of various trust accounts in the *** ("Fund"), a *** business trust. The Fund's prospectus indicates that it is a no-load open end diversified investment company, the portfolio of which consists exclusively of obligations issued or guaranteed as to principal and interest by the U.S. Treasury maturing in one year or less from the date of acquisition or purchased pursuant to repurchase agreements which provide for repurchase by the seller within one year from the date of acquisition. The Fund is of the type commonly referred to as "money market" funds.

The Examination Report indicates that the governing instruments of the trusts in question are restrictive in that they specify what investments are permissible and do not give to the trustee the discretion to make investments other than those specified. All the trust instruments contain the following investment authorization, or a paraphrase thereof: "All or any part of [the trust corpus] may be invested in Treasury Bills, Bonds or other obligations of the United States. . . ." However, none of the trust instruments in question specifically authorize investment in a money market fund, the portfolio of which contains only Treasury Bills, Bonds or other general obligations of the United States of America.

On the basis of the above facts, the Examination Report cited the Bank for a violation of 12 C.F.R. § 9.11(a), a regulation which provides that

> [f]unds held by a national bank in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law.

By letter of September 15, 1980, you responded to the Examination Report's criticism by arguing that no violation of section 9.11(a) had occurred because the quoted language of the trust instrument permitted investment in the Fund. You apparently base that interpretation on the theory that investment in the Fund is the functional equivalent of investment in Treasury Bills, Bonds or other general obligations of the United States.

By letter of February 26, 1981, Mr. Dowdle responded to your letter. He reiterated the Examination Report's finding that the Bank's investments in the Fund constituted violations of 9.11(a). He also enclosed a copy of a letter which I signed on January 19, 1981. As Mr. Dowdle explained, that January letter deals principally with the collective investment fund diversification requirement of 12 C.F.R. § 9.18(b)(9)(ii). However, the letter is pertinent to the permissibility of the subject investments of the Bank because it discusses the meaning of the 9.18(b)(9)(ii) language "direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest." The letter finds that the Fund is not an investment within the quoted language, nor the functional equivalent of such an investment.

You answered Mr. Dowdle's February 26, 1981, letter by sending the April 10, 1981, letter, to which this letter responds. You ask us to reexamine our position

in light of a legal opinion which you have enclosed. That legal opinion is dated March 24, 1981, and was prepared for the Fund by the law firm of ***, ***. Like the January 19, 1981, letter which Mr. Dowdle supplied to you, the firm's March 24, 1981, opinion letter does not discuss 12 C.F.R. § 9.11(a), but is relevant to that section because it discusses the meaning of the section 9.18(b)(9)(ii) exception for general obligations of the United States.

I have reviewed the March 24, 1981, legal opinion that you have supplied. In my opinion, it provides no support for finding that the Bank, as trustee, can invest in the Fund where the governing trust instrument limits permissible investments to "Treasury Bills, Bonds or other general obligations of the United States," and other investments not relevant to the Bank's investments in the Fund. Before commenting on the March 24, 1981, legal opinion, I wish to explain why I feel the Bank violated the governing trust instruments and thus section 9.11(a) when it made the subject investments in the Fund.

Under section 518.11 of the Florida Statutes, *F.S.A.*, § 518.11, the investments of Florida fiduciaries are governed by the "prudent man" rule. However, section 518.12 states that section 518.11

> shall not be construed . . . as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers . . . .

As this language makes clear, any specific restrictions on a Florida trustee's investment powers contained in a trust instrument will be effective regardless of the "prudent man" rule.

Under Florida law, "[g]eneral rules of construction of written instruments apply to the construction of trust instruments, whether they are contracts, deeds or wills." 33 Fla. Jur. *Trusts* § 6 [footnotes omitted]. Under those rules of construction, words and phrases should be given their usual and ordinary meaning unless it appears from the instrument that some other meaning was intended. *See* 11 Fla. Jur. 2d *Contracts* § 115; 19 Fla. Jur. 2d *Deeds* § 116, 35 Fla. Jur. *Wills* § 273.

Although I could locate no cases on point, it is my opinion that the usual and ordinary meaning of the term "Treasury Bills, Bonds and other general obligations of the United States" does not include investments in the Fund. In ordinarily used and understood terms, an investment in the Fund would be described as an investment in a "money market mutual fund," not as an investment in "Treasury Bills, Bonds, or other general obligations of the United States."

In noting the above difference in meaning, I must emphasize that the difference is not the result of an accident of semantics. As the January 19, 1981, letter supplied to you by Mr. Dowdle makes clear, it is my opinion that there are significant differences between a direct investment in obligations of the United States and an investment in the Fund. Because that letter is familiar to you, I will not repeat here its detailed analysis on this point. In my opinion, that analysis makes clear that investment in the Fund is not equivalent to, or merely a method of, direct investment in U.S. Government obligations. Thus, that analysis also makes it clear that the term "Treasury Bills, Bonds or other general obligations of the United States" does not include investments in the Fund.

Therefore, because the relevant trust instruments limit trust investments to "Treasury Bills, Bonds or other general obligations of the United States," a term which does not include investments in the Fund, it is my opinion that the trust instruments preclude a trustee's investment in the Fund under Florida law.

In stating the above opinion, I wish to comment on several statements made in the March 24, 1981, legal opinion you have provided to us. First, I note that the opinion admits that no case law could be found which states that an investment in the Fund, or a similar money market fund, is the functional equivalent of a direct investment in the obligations of the United States Government.

Second, I note that in arguing that investments in the Fund are the functional equivalent of direct investments in United States obligations, the opinion cites several cases which are said to demonstrate that "[m]any courts have recognized the equivalence of investments in similar situations." In my opinion, the cases cited do not indicate that a Florida court would interpret a trust instrument's phrase "Treasury Bills, Bonds or other general obligations of the United States" as including investments in the Fund. *In re D'Happert's Estate*, 200 A. 927 (Pa. 1938), did find a trust investment in a pool of mortgages to be within a trust instrument's restriction of investments to "good first mortgages." However, that decision was based on a Pennsylvania statute (Act of April 6, 1925, P.L. 152, P.S. §2514) which specifically stated that participation mortgages are not, by reason of the participation feature alone, an improper trust investment. Because of the reliance on that statute, it is my opinion that the case is not relevant to whether an investment in the Fund is the equivalent of an investment in United States Treasury obligations.

In re Union Trust Company of New York, 219 N.Y. 514, 114 N.E. 1057 (1916) and *Bowden v. Citizens Loan and Trust Co.*, 194 Minn. 113,259 N.W. 815 (1935) it was found permissible for a trustee to invest the funds of two or more trusts in a common investment in order to be able to invest in one large investment which would be more advantageous than the several smaller investments which would be necessary in the absence of such combination. In both cases there was no question that the investment would have been proper had the funds of only one trust been used. Thus, the only question was the propriety of sharing an investment between different trusts. I do not find these cases provide precedent for a Florida court to find investment in the Fund equivalent to investment in U.S. Treasury obligations. Unlike investment in the Fund, the trustee's combination of his trusts' funds in the cited cases did not expose the trust beneficiaries and remaindermen to the risk of loss due to the fraud, mismanagement, or investment error of a third party. Thus, unlike the Bank's investment in the Fund, it did not constitute an investment essentially different from the investment authorized by the trust instrument.

Finally, I wish to comment on the March 1981 opinion's statement that my January 1981 letter, in noting that investment in the Fund exposed one to risk of loss due to Fund mismanagement, fraud or investment error, "overlook[s] the fact that banks are subject to the same risk with respect to the fraud, mismanagement or investment error of their own employees." My letter did not overlook those risks. It did not discuss them because they are present whenever a bank acts as trustee. They are certainly not eliminated when a bank trustee invests trust monies in the Fund. In commenting on the risk of fraud, mismanagement or investment error on the part of the Fund or its personnel, my January 1981 letter focused on the fact that a trustee's investment in the Fund exposes trust beneficiaries and remaindermen to those risks *in addition* to the risks they already are exposed to regarding the bank trustee's own fraud, mismanagement or investment error. This additional risk clearly distinguishes an investment in the Fund from a direct investment in U.S. Treasury obligations.

I trust that this letter, when read in conjunction with the January letter Mr. Dowdle has supplied to you, explains the position of the Office regarding the applicability of section 9.11(a) to the subject investments of the Bank in the Fund. I also trust it answers any questions regarding that position which may have been raised by the March 1981 legal opinion you supplied us concerning the applicability of section 9.18(b)(9)(ii) to investments in the Fund. Because the subject investments constituted a violation of section 9.11(a), I reiterate Mr. Dowdle's statement that the Bank immediately take steps to remove the subject investments without loss to the affected trust department accounts. Please advise Mr. Dowdle when this has been accomplished.

Copies of your response should be directed to Donald R. Johnson, Director, Trust Examinations, Comptroller of the Currency, the Administrator of National Banks, Washington, D.C. 20219, and to National Trust Examiners, Post Office Box 16058, Plantation, Florida, 33318.

Dean E. Miller
Deputy Comptroller for Specialized Examinations

* * *

207—June 19, 1981

This is in response to your letter of June 5, 1981, requesting this Office's interpretation of the term "dwelling" in 12 C.F.R. § 29.2. Specifically you ask whether the adjustable rate mortgage regulation (12 C.F.R. § 29) is intended to cover a mortgage loan made to a builder or real estate developer who constructs a residential structure for the purpose of reselling it and not for the purpose of using it as his residence.

Adjustable rate mortgage loans are defined as

> Any loan made to finance or refinance *the purchase of* and secured by a lien on a one- to four-family *dwelling*
> (12 C.F.R. § 29.2 (1981) (emphasis added))

You are correct in stating that this definition does not cover mortgage loans made to a builder or real estate developer when such builder or real estate developer intends to resell the structure as soon as the construction is completed. In such a case the bank's loan is made to finance the working capital needs of a construction business and not the purchase of a dwelling. The bank and the builder expect repayment to come from the contemplated sale of the finished house.

I hope this has been responsive to your inquiry. If you have any further questions, please contact Mr. Francis S. Rath at (202) 447-1880.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

208—July 31, 1981

This is in response to your letter of June 4, 1981, addressed to this Office. That letter concerns the permissibility of giving an employee-borrower discount or forbearance under the Adjustable-Rate Mortgage ("ARM") Regulations (12 C.F.R. Part 29).

The relevant facts as contained in your letter and enclosures are relatively simple. The *** ("Bank") wishes to offer adjustable-rate mortgages to Bank employees giving the employee-borrower a discount or forbearance from the market rate with the discount or forbearance to be terminable upon the borrower's termination of employment with the Bank. As stated in your letter, the mechanics of the procedure would be as follows:

> The bank would have the borrower-employee sign the bank's standard form of ARM note, filled in to state the same initial interest rate that the bank is offering to the general public. The bank and the employee would simultaneously execute a side letter agreement whereby the bank would agree to forego a certain portion of the note interest, at the initial and at subsequent adjusted interest rates. The forebearance would continue so long as the borrower remains an employee of the bank and continues to use the property securing the loan as the borrower's principal residence.

In my opinion, the use of such a forbearance agreement in connection with an adjustable-rate mortgage loan is permissible provided certain requirements, apart from the requirements of 12 C.F.R. Part 29, are met. For the reasons detailed below, the program you have described, with the necessary changes as suggested, would appear to satisfy these requirements.

The nominal, or initial interest rate offered on the loan subject to the forbearance agreement must be at the rate or within the range of rates currently being charged on similar loans by the bank making the subject loan. That is, a bank could not write a loan with an initial interest rate materially in excess of its currently offered rate on similar loans and then forbear charging the difference between that rate and current rates. You

have stated that the Bank, under your program, will offer the loans at the same initial interest rate that the Bank is offering to the general public. Accordingly, this requirement is satisfied.

Another requirement is that the disclosure provided to the employee-borrower be sufficient to adequately notify the borrower of any possible future consequences of the side agreement. The "DRAFT OF SIDE LETTER FOR EMPLOYEE A.R.M. LOAN" enclosed with your letter is an attempt to satisfy this requirement. I note that the agreement clearly states that it is tied to a specific adjustable-rate loan note. Additionally, the agreement adequately describes those occurrences which will cause the termination of the forbearance. One additional required disclosure which needs to be made is a statement to the effect that upon termination of the forbearance the interest rate will immediately adjust to the current rate of the loan note. This statement is necessary to advise the borrower that the rate increase caused by the termination of the forbearance agreement need not be made only at a scheduled date for rate adjustment. Also this statement must inform the borrower that the increased rate need not be phased in at a maximum rate of 1% per six month period as would be the case for index-based changes on an adjustable-rate loan made pursuant to the Comptroller's ARM regulations.

A final requirement relates to the notice of intent to change the interest rate on an adjustable-rate mortgage loan required under 12 C.F.R. § 29.8(b). You have enclosed a "Periodic Notice Form" with your letter which attempts to satisfy this requirement. That form proposes to list both the interest rate and installment payment amounts in terms of the discounted or post-forbearance figures, with a statement indicating that these figures are net figures. It is my opinion that the figures reported first should be the undiscounted interest rate and installment amount that actually exist under the loan note without regard to the side agreement. This is necessary in order to advise the borrower as to the consequences of any termination of the forbearance agreement. A second set of figures should then be presented which indicate the net rates after incorporating the forbearance agreement.

Subject to the above modifications to the "DRAFT OF SIDE LETTER FOR EMPLOYEE A.R.M. LOAN" and "Periodic Notice Form," the Bank may offer the proposed employee forbearance program in compliance with the adjustable-rate mortgage requirements of 12 C.F.R. Part 29.

I trust this has been responsive to your request

Andrew J. Levinson
Senior Attorney
Legal Advisory Services Division

* * *

209—August 3, 1981

This is in response to your letter of June 11, 1981, to Mr. Francis S. Rath in which you request this Office's opinion on various questions involving the adjustable-rate mortgage (ARM) regulations, 12 C.F.R. § 29. In particular, you ask the following

1. When setting the base index rate to be utilized in the loan documentation, may the bank use the index rate effective at the time of the commitment, or must the bank use the index rate in effect on the date of the loan closing?

2. When co-makers (such as parents and children) execute a note, must the notice required under the regulations be sent to all co-makers, and if so, may the bank provide that such notice, if required to be sent to all co-makers, be sent to the property address only unless any co-maker designates in writing a contrary address?

3. Although it is apparently clear that a bank has a right to carry over any increases which it does not take because of limitations set forth in the regulations . . . , can the bank also carry over any other type of index rate change which is not translated into an interest rate change because of voluntary actions on the part of the bank?

4. In the event that the bank establishes minimum increments for changes, it is our understanding that to the extent that a change in the index rate is not capable of being translated into an interest rate change because such index rate change is not a whole multiple of our minimum increment, the balance of such index rate change not so translated into an interest rate change will be carried over to the next change date. By way of example, if minimum increments of .1% are established in the bank's documentation for interest rate changes and if the index rate change is .89% on a change date, is the bank obligated to increase the interest rate only by .8% and to carry over .09% or may the bank round off the index rate change to .9% and provide for an interest rate change of .9% without carryover?

I will answer your questions in the order you have presented them.

1. Under 12 C.F.R. § 29.4 the bank must use as a base index rate either the "most recently available value on the date of loan origination" or "the . . . average of index values over an . . . interval [equal to the interval between rate changes] ending with the date of loan origination." Therefore, the bank may not use the index rate effective at the time of commitment unless, because of proximity in time, it is the same as the index rate that will be in effect on the date of loan closing

2. The ARM regulations require that certain notices be given to the prospective borrowers both at the time the bank first provides information concerning mortgage loans or provides a loan application form (12 C.F.R. § 29.8(a)) and at least thirty days and no more than forty-five days before any interest rate change may take effect (12 C.F.R. § 29.8(b)). Since a co-maker executing a note is a borrower, the notice required under the regulation to be given to the borrower must be provided to all co-makers. In the case of the initial ARM disclo-

sures; however, a single copy will suffice if all co-makers are present when the application is received or written information is provided. In all other cases the initial and periodic notices should be hand-delivered or sent to the last known address of all co-makers and not merely to the property address. However, endorsers or guarantors who are not co-makers or borrowers would not be required to receive notice under the regulation.

3. You are correct in stating that under 12 C.F.R. § 29.5(c) the bank can carry over not only involuntary rate changes not translated into interest rate changes but also any index rate changes that a bank has chosen voluntarily not to pass on to the borrower immediately.

4. Under section 29.5(c) of the ARM regulation a bank may establish minimum increments for interest rate changes. In addition, the regulations provide that:

> Changes in the interest charged on an adjustable-rate mortgage loan must be linked to changes in an index specified in the loan documents, *i.e.*, a 1 basis point (1 basis point = .01 percentage point) change in the index must be translated into a 1 basis point change of the same direction in the contract interest rate, except as otherwise provided in section 29.5.
> (12 C.F.R. § 29.4)

The method of change provided was designed for (1) administrative simplicity and (2) fairness both to the bank and the borrower, so that neither the bank nor the borrower should benefit at the expense of the other party. The regulations translate a change in the index rate into a change in the interest rate on the adjustable-rate mortgage loan. However, the regulations do not specify how to measure the basis point change in the index.

Since the regulations do not specify a specific method of measuring the basis point changes in the index value and do not prohibit rounding, this Office would not object to a bank rounding an index rate change to the nearest ⅛ or 1/10 of 1% provided that the method of rounding is consistent with the basic policy of administrative simplicity and fairness. (We would, however, require a bank that chooses to round the index rate to carry over the rounded portion to the next rate change, *e.g.*, if the rate change is .16% and the bank rounds this to .20%, the bank must subtract the additional .04% at the next interest rate change date).

Please note that this Office is considering technical amendments to the adjustable-rate mortgage regulations in the future which may clarify this question directly.

I hope this has been responsive to your inquiry. If you have any further questions, please contact Mr. Francis S. Rath at (202) 447-1880.

Andrew J. Levinson
Senior Attorney
Legal Advisory Services Division

* * *

210—August 11, 1981

This is in reference to your letter of June 26, 1981, in which you request an opinion regarding the applicability of the adjustable-rate mortgage ("ARM") regulation (12 C.F.R. § 29) to several variable rate loan transactions.

The first transaction would involve a "loan to a builder for the purpose of constructing a 1 to 4 family dwelling for resale to a customer." In our view, such an ARM loan would not be subject to 12 C.F.R. § 29.

The second transaction would involve "a loan to an individual to construct his own 1 to 4 family dwelling". Based on the limited facts you have presented, it is unclear whether such a loan would be subject to 12 C.F.R. § 29. If such loan was made purely for construction purposes and was not, in part, made to finance or refinance a dwelling on a permanent basis, the credit would not be subject to the ARM regulation. This requires that the permanent—*i.e.*, purchase—financing be undertaken by the construction lender or by a financially responsible lender other than the bank granting the construction loan under a binding commitment entered as of the time the construction financing commences. If such a binding take-out commitment is present, we would consider the construction phase to be outside the scope of 12 C.F.R. § 29.

A third arrangement we are asked to consider is a "loan to an individual to construct or acquire a 1 to 4 family secondary dwelling." In our opinion, such a loan would be subject to the ARM ruling. If a variable rate loan was made to finance or refinance the purchase of a 1 to 4 family dwelling and is secured by a lien on such a unit, it would be subject to the ruling regardless of whether the property was the primary or "secondary," etc., residence of a family.

Finally, you ask whether a "loan to build or acquire commercial property, although subject to a variable rate," would be covered by the regulation. A variable rate loan made to build or acquire commercial property would generally not be subject to 12 C.F.R. § 29. However, if such a loan is made to finance or refinance the purchase of a "commercial" property in the form of a 1 to 4 family dwelling, including a condominium unit, cooperative housing unit, or mobile home, and the property is used for a business or commercial purpose (*e.g.*, rental income) the loan would be subject to the requirements of our regulation. It is not the investment or other intent of the borrower, but rather the fact that a loan is made to finance or refinance the purchase of property of the type described in the definition, which determines the applicability of the regulation.

We trust that this is responsive to your inquiry. If you have additional questions, please do not hesitate to contact us.

Andrew J. Levinson
Senior Attorney
Legal Advisory Services Division

* * *

211—July 28, 1981

This letter is in reference to the *** ("Bank") profit sharing plan. Our most recent figures indicate that more than $190,000 out of $220,000 of profit sharing trust assets have been invested in a loan to the *** ("Loan Company"). As early as October 5, 1978, in a meeting of the Bank's Board of Directors with Assistant National Bank Examiner ***, this Office advised the Bank that loans of profit sharing trust assets to the Loan Company are in violation of federal law. Despite several subsequent requests that the Bank terminate these loans, both the dollar amount and percentage of trust assets loaned to the Loan Company have steadily increased, with the result that more than 86% of the profit sharing trust assets are currently loaned to the Loan Company. To avoid future legal action by this Office, the Bank must take immediate steps to ensure that all loans of profit sharing trust assets to the Loan Company are reversed at no loss to the plan or the Bank.

The relevant facts which require the termination of the above described loans are as follows. The profit sharing plan ("Plan"), established in 1969, is a covered plan within the scope of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* The plan's trustee is an officer, director, and shareholder of the Bank. Currently the plan has loaned approximately 86% of its assets to the Loan Company at an interest rate of 11%. These loans are secured by notes receivable owned by the Loan Company. The officers and directors of the Bank are identical to the officers and directors of the Loan Company. Shareholders owning 100% of the Loan Company also own approximately 93% of the Bank.

The Bank officer-director serving as plan trustee is a fiduciary with respect to the plan. ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), prohibits a fiduciary from lending money or extending credit between the plan and a "party in interest." Thus, if the Loan Company is within the definition of a "party in interest," the loan of trust assets to the Loan Company is prohibited by ERISA § 406.

A "party in interest" under ERISA includes:

> *a corporation*, partnership, or trust or estate *of which* (or in which) *50 percent or more of-*
>
> (i) *the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,*
> (ii) the capital interest or profits interest of such partnership, or
> (iii) the beneficial interest of such trust or estate,
>
> *is owned directly or indirectly, or held by persons described in subparagraph* (A), (B), (C), (D), or (*E*);
> (ERISA § 3(14)(G), 29 U.S.C. § 1002 (14)(G) (emphasis added))

Subparagraph (E) of ERISA § 3(14) includes

> *an owner, direct or indirect, of 50 percent or more of-*
>
> (i) *the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,*
> (ii) the capital interest or the profits interest of a partnership, or
> (iii) the beneficial interest of a trust or unincorporated enterprise,
>
> *which is an employer* or an employee organization *described in subparagraph (C)* or (D),
> (ERISA § 3(14)(E) (emphasis added))[1]

Finally, an employer described in subparagraph (C) is

> an employer any of whose employees are covered by such plan;
> (ERISA § 3(14)(C))

The Loan Company fits within the definition of a "party in interest." It is a corporation over 50% of the stock of which is owned by persons also owning over 50% of the stock of the employer Bank. Accordingly, the loan to the Loan Company is a prohibited transaction under these labor provisions of ERISA.

The loans to the Loan Company also violate ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1). That section provides that a fiduciary with respect to a plan shall not deal with the plan assets in his own interest or for his own account. The Bank officer-director who acts as fiduciary for the plan is dealing with plan assets in his own interest by lending such assets to the Loan Company of which he is a shareholder, officer, and director.

The loan of trust assets to the Loan Company may also violate the "exclusive benefit" rule contained in ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1). That rule provides that, except for certain unrelated exceptions,

> the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.
> (29 U.S.C. § 1103(c)(1))

While the loan of trust assets to the Loan Company does not directly inure to the benefit of the Bank, the Bank indirectly benefits through its shareholders who receive the benefit of the loan as common shareholders of the Loan Company. This interpretation appears proper in light of the broad construction which the courts have given to the statutory language of ERISA. As stated in *Marshall* v. *Kelly*, 465 F. Supp. 341 (W.D. Okla. 1978):

> Like other legislation with remedial objectives, ERISA should be given a broad construction in order to carry out its purposes of protecting the in-

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[1] It is my opinion that the term "owner" as used in subparagraph (E) is not limited to a sole individual 50% or more owner but also includes a small, clearly defined group in control of the corporate owner. Our staff has had several recent telephone conversations with individuals at the Department of Labor (the agency responsible for enforcement of the labor provisions of ERISA) and [illegible] position which they advocate.

> terests of Plan participants and beneficiaries and preserving the integrity of Plan assets.
> (*Id.* at 349)

The penalties for violation of the labor provisions of ERISA (*i.e.*, the portions of the Act administered by the Department of Labor and codified with other federal labor laws) include both criminal and civil liability. These penalties, provided for in ERISA §§ 501 and 502, 29 U.S.C. §§ 1131 and 1132, include both substantial monetary penalties and imprisonment for wilful violations.

The penalty for participation in transactions prohibited by ERISA § 406, 29 U.S.C. § 1106, is initially 5% of the amount involved and may rise to 100% if violations are not corrected within specified time frames. *See* 29 U.S.C. § 1132(i).

In addition to violating ERISA's labor provisions, the above described loans violate the tax provisions of ERISA (*i.e.*, the portions of the Act codified in the Internal Revenue Code and administered by the Internal Revenue Service). The same transactions that are prohibited under ERISA § 406, discussed above, are also prohibited under ERISA § 2003(a), codified as § 4975(c)(1)(B) of the Internal Revenue Code of 1954. The only difference in the tax code prohibition and that described earlier under ERISA § 406, 29 U.S.C. § 1106(a)(1)(B), is that the tax code prohibits dealings with "disqualified persons" while ERISA § 406(a)(1)(B) prohibits dealings with "parties in interest." However, the two terms are defined similarly. Accordingly, for the same reasons explained above, the loans to the Loan Company violate § 4975(c)(1)(B) of the Internal Revenue Code.

The Bank officer-director who acts as trustee of the plan may also be in violation of the fiduciary self-dealing prohibition of ERISA § 2003(a), found in § 4975(c)(1)(E) of the Internal Revenue Code. You should be aware that §§ 4975(a) and (b) of the Code impose excise taxes on prohibited transactions such as the loans involved here. These taxes are imposed on the disqualified persons themselves and may in continuing situations be set as high as 100% of the amount involved. In the situation presented here, these taxes could be separately imposed on both the Loan Company and the Bank officer-director who acts as the trustee of the profit sharing plan's trust.

In addition to the above described taxes, the entire profit sharing trust could also lose its tax exempt status unless the loans to the Loan Company are terminated. In order for the trust to remain tax exempt, it must continue to meet the requirements of § 401(a) of the Internal Revenue Code. This section requires, *inter alia*, that the plan be operated for the "exclusive benefit" of plan employees. In the present situation it appears that the Plan is not operated solely to benefit plan employees but also to benefit the common shareholders of the Bank and Loan Company. This is especially true in light of the relatively low rate of interest currently being charged on the loan (the loan being given at a rate of 11% in December 1979 when the prime rate was in the 15-15½% range). Treasury Regulation § 1.401-1(b)(3), promulgated under § 401(a) of the Internal Revenue Code, further explains what constitutes a violation of the exclusive benefit rule. According to that regulation:

> If the plan is so designed as to amount to a subterfuge for the distribution of profits to shareholders, it will not qualify as a plan for the exclusive benefit of employees even though other employees who are not shareholders are also included under the plan . . . All of the surrounding and attendant circumstances and the details of the plan will be indicative of whether it is a bona fide stock bonus, pension, or profit-sharing plan for the exclusive benefit of employees in general.

The facts in the present situation could plausibly indicate some sort of subterfuge to benefit the shareholders of the Bank and Loan Company.

You should further be advised that this exclusive benefit rule is violated whenever the benefits of the loan do not best serve all the participants of the plan. It is in no way necessary that any benefits of the loan inure to the bank or any other party in order to violate the rule.

The revenue ruling (Rev. Rul. 72-532, 1972-2 C.B. 250) which you cite in your August 29, 1979, letter to this Office is not controlling of the matter. The above described violations are entirely separate from the prohibitions addressed in that ruling. Revenue ruling 72-532 dealt with violations of § 503(b) of the Internal Revenue Code. In fact, the prohibitions described above were all added to the laws of the United States as a result of the passage of ERISA in 1974—two years after the date of the revenue ruling.

The test of a prohibited transaction under § 503(b) of the Internal Revenue Code is significantly different from that of a prohibited transaction under ERISA § 406, 29 U.S.C. § 1106, or ERISA § 2003(a), Internal Revenue Code § 4975. For instance, § 503(b) only prohibits loans without adequate security and reasonable rates of interest. The ERISA provisions have no such limitations but rather apply to all loans regardless of security or interest. Additionally, § 503(b) would only apply to loans to corporations owned or controlled by the employer corporation itself. The ERISA prohibitions also apply to loans to corporations which have shareholders in common (*i.e.*, 50% or greater ownership or control) with the employer corporation.

In addition to the ERISA violations explained above, the profit sharing trust loans to the Loan Company may also violate 12 U.S.C. § 371c. This section limits a bank's loans or extensions of credit to an affiliate. The term "affiliate" includes any corporation

> (2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of a member bank who own or control either a majority of the shares of such bank or more than 50 per centum of the number of shares voted for the election of directors of such bank at the preceding election, or by trustees for the benefit of the shareholders of any such bank; or
>
> (3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one member bank
> (12 U.S.C. § 221a(b))

The Loan Company is an affiliate of the Bank under both paragraphs (2) and (3) of subsection (b).

The relevant portion of section 371c requires loans made by a member bank to its affiliates to be adequately collateralized. It states:

> [E]ach loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of *stocks, bonds, debentures, or other such obligations* having a market value at the time of making the loan or extension of credit of at least 20 per centum more than the amount of the loan or extension of credit. . . .
> (12 U.S.C. § 371c (emphasis added))

This Office and the Federal Reserve Board have historically interpreted the phrase "other such obligations" to refer to obligations having similar characteristics as stocks, bonds, and debentures, *i.e.*, obligations of the kind commonly known as "investment securities." *See* paragraph 4050 of *Interpretations of the Board of Governors of the Federal Reserve System.* As stated in paragraph 4050:

> There is a strong indication that the law refers to obligations for which there are sufficient price quotations on the open market to make it possible to determine their market value with reasonable accuracy.

The type of collateral used to secure the loans to the Loan Company has been explained to this Office in a June 19, 1974, letter from ***, trustee of the Plan. According to that letter, "[T]he *** Loan Company pledges as collateral security for the loan, Notes Receivable owned by the *** Loan Company. . . ." Such notes do not fit within the "other such obligations" language of § 371c as that phrase has been interpreted by this Office and the Federal Reserve Board.

The language of § 371c only limits loans or extensions of credit made by the member banks themselves. In the present situation, the loans to the Loan Company were not made by the Bank itself but rather were made by the Bank's profit sharing plan. However, where such plans are used as a mere conduit, device, or scheme to avoid the restrictions of § 371c, the transactions will nevertheless be subject to § 371c limitations. This is in keeping with this Office's policy of raising the substance of a transaction over its form. While the situation is not entirely clear here, it does appear that the Bank may be using the profit sharing plan as a method of circumventing § 371c restrictions on loans to an affiliate. If this is the case, then the Bank would be in violation of the collateralization requirements of § 371c, as described above.

As a final matter, you should be aware that this Office, in addition to the other financial institution regulatory agencies, has recently entered into an agreement with the Department of Labor to refer to that department possible ERISA violations of a significant nature. This agreement is contained in Trust Banking Circular 18 (February 4, 1981), a copy of which is enclosed with this letter. It is my opinion that the above transactions do constitute possible ERISA violations of a significant nature within the scope of Trust Banking Circular 18. Accordingly, I have referred this matter to the Department of Labor.

For all of the foregoing reasons, this Office believes that the Bank should take immediate action to ensure that all loans of profit sharing trust assets to the Loan Company are reversed at no loss to the plan or the Bank. Please inform Regional Director of Trust Operations Lawrence L. McCants of our Denver Regional Office of all steps taken by the Bank to comply with this decision, including dates of implementation. This information is to be sent to Mr. McCants within 30 days of the date of this letter.

Dean E. Miller
Deputy Comptroller for Specialized Examinations

* * *

NOTE: Trust Banking Circular 18 is not printed here because of space limitations. It is available from other sources.

212—July 2, 1981

This is in response to your letter of January 7, 1981, concerning the private placement activities of national banks. Your letter, which was addressed to ***, has been referred to me for reply.

In your letter, you indicated that a client of yours, a national bank ("Bank"), is proposing to provide advisory services in connection with a private placement of an industrial revenue bond ("IRB") issue. In addition, the Bank proposes to issue a standby letter of credit (L/C) to support the IRB in question. In discussing this proposal with *** in our office, you indicated that the standby L/C would comply with the requirements stated in 12 C.F.R. § 7.1160. It was your understanding that the standby L/C would be subject to the lending limitations of 12 U.S.C. § 84. You also indicated that your inquiry did not pertain to the question of whether this arrangement would possibly have to be aggregated with the Bank's outstanding liabilities for the purposes of 12 U.S.C. § 82. Essentially, your remaining question was whether the proposed advisory/standby arrangements would fall within the private placement activities that are permissible to national banks under the Glass-Steagall Act, 12 U.S.C. § 24(7).

In 1977, the Federal Reserve Board Staff published a study on "Commercial Bank Private Placement Activities" ("FRB study"). The study focused on a number of private placement services, such as making recommendations regarding the terms and the timing of the transaction, assisting in the preparation of the financing documents, contacting a limited number of potential institutional investors, arranging meetings between the issuer and potential investors, and assisting in subsequent negotiations. After a careful analysis, both the FRB and this Office concluded that these activities did not violate the provisions of the Glass-Steagall Act regarding underwriting, distribution, and selling of securities by commercial banks. *See*, a letter by John G. Heimann, Comptroller of the Currency, dated December 9, 1977, *Federal Banking Law Reporter*, (Commerce Clearing House), ¶ 85,107.

Because the Glass-Steagall Act does not contain the definition of the terms "underwriting" and "distribution," the FRB study first analyzed the commercial bank private placement activities in light of the comparable definitions of the securities laws. The analysis concluded, however, that because private placements did not involve any public offering of securities, these activities did not fall under the definition of "underwriter" and "distribution" as these terms are defined in the securities laws.

Second, the FRB study noted that private placement advisory activities did not seem to present such hazards that commercial banks would ordinarily encounter in the investment banking business. In its interpretation of the securities provisions of the Glass-Steagall Act, in *Investment Company Institute* v. *Camp*, 401 U.S. 617 (1971), the Supreme Court concluded that Congress had adopted the provisions of the Glass-Steagall Act in view of such hazards. Thus, the Glass-Steagall Act was intended to prohibit investment of bank assets in frozen or imprudent securities; risking bank reputation in doubtful securities activities; potential conflicts between the investment banker's promotional interests and his activities as a commercial banker; and making unsound loans to bank securities affiliates, potential purchasers, or the issuers of the securities. *Id.* at 630-634. Since the private placement advisory services do not involve any purchase of securities by the advising bank for its own account, it would not risk its assets in the same manner as "firm commitment" underwriters. Also, since potential investors are sophisticated individuals and use their own investment judgment, the bank does not face similar promotional pressures that are present in a public offering.

While the details of the Bank's proposed advisory services have not yet been crystallized, it is expected that, apart from the standby L/C feature, they would be limited to the "traditional" private placement services as outlined in the FRB study. Although it could be argued that the standby arrangement provides an avenue of bolstering the public image of creditworthiness of the issuer, I do not believe that such extension of credit, in itself and apart from activities ordinarily associated with investment banking, would violate the overall prohibitions of the Glass-Steagall Act. The credit risk inherent in a standby L/C is the kind of a risk that commercial banks are equipped to evaluate and which can be monitored through the periodic examinations by their regulatory agencies. Also, the standby commitment would not require the Bank to assume directly any market risk for the underlying securities. The 1977 FRB study indicated that the private placement "packages" by commercial banks already at that time included in some instances bank loans to issuers, and that such simultaneous extensions of credit did not in the FRB's opinion violate the provisions of the Glass-Steagall Act.

Consequently, it is my opinion that national banks may provide standby letters of credit in connection with their private placement advisory services. However, I hasten to add that I have reached this conclusion based on the information currently available to this Office. In the event it is discovered later that these activities involve abuses or unacceptable risks, I believe that the issue should be reconsidered.

Please note that this letter does discuss whether, and to what extent, the regulations issued by the Municipal Securities Rulemaking Board apply to the proposed private placement activities. In this respect, the Bank should rely on the opinion of its legal counsel.

* * *

213—September 8, 1981

This responds to your letter dated July 17, 1981, addressed to Billy C. Wood, Deputy Comptroller for Multinational Banking. You request a ruling that a plan by *** ("*** Bank") to guarantee certain indebtedness and deposit liabilities of its Canadian bank affiliate would not be subject to the national bank indebtedness limits contained in 12 U.S.C. § 82, as expressed in Interpretive Ruling 7.7355(a), 12 C.F.R. § 7.7355(a) (1981). The conclusions reached in this letter also apply to any outstanding questions from Mr. ***'s April 29, 1980, letter to Chief Counsel John E. Shockey.

*** Bank is a wholly owned subsidiary, except for directors' qualifying shares, of *** Corporation ("*** Corp"). *** Corp has established a wholly owned subsidiary, *** Ltd. ("***"), with its head office in ***. *** provides a range of financial services to Canadian companies. Under the new Canadian Bank Act (the Act), a mechanism has been created to permit non-Canadian organizations to establish banking subsidiaries in Canada. Under a conversion process permitted by the Act, *** will be converted into a Canadian chartered bank with the name ***. According to your letter, this conversion was expected to occur on or about July 27, 1981, with the actual date dependent on the Canadian Ministry of Finance.

According to your letter of July 17, 1981, the Canadian Government has, "in effect," required that *** be established as a subsidiary of *** Bank rather than as a subsidiary of *** Corp. Therefore, *** Corp plans to transfer ownership of ***, effective at the time of conversion, to *** Bank under the general consent procedure contained in section 211.5(c)(1)(iii) of Federal Reserve Board Regulation K, 12 C.F.R. § 211.5(c)(1)(iii) (1980).

You anticipate that a substantial portion of indebtedness and deposit liabilities issued by *** subsequent to the transfer of ownership would be guaranteed by *** Bank. In your letter, you assume that this proposed guarantee by *** Bank would be in accordance with our Interpretive Ruling 7.7012, 12 C.F.R. § 7.7012 (1981), which reads as follows:

> A national bank may guarantee the deposits and other liabilities of its Edge Act and agreement corporations and of its corporate instrumentalities in foreign countries.

You have requested a ruling to the effect that *** Bank's guarantee of ***'s indebtedness and deposit li-

abilities would not be subject to the limitation on indebtedness of national banks under 12 U.S.C. § 82.

It has been the position of this Office that guarantees which are permissible under Interpretive Ruling 7.7012 are not subject to the limitation on indebtedness contained in 12 U.S.C. § 82. Because *** will be a wholly owned corporate instrumentality of *** Bank in a foreign country within the meaning of Interpretive Ruling 7.7012, the guarantee by *** Bank of certain indebtedness and liabilities of *** is not subject to the limitation contained in 12 U.S.C. § 82.

This decision is consistent with the congressional policy of facilitating the exercise by a bank of its international banking and overseas financial activities. *See* 12 U.S.C. §§ 611-635. Of course, *** Bank should be guided by prudent banking practices when it agrees to guarantee the debts of ***. *** Bank should avoid the assumption of excessive contingent obligations.

I trust this has been responsive to your inquiry.

John M. Miller
Acting Chief Counsel

* * *

214—July 23, 1981

Michael Bradfield, Esquire
General Counsel
Board of Governors of the
Federal Reserve System
Room B-1046
Washington, D.C. 20551

Dear Mr. Bradfield:

This responds to a letter from Acting General Counsel Robert E. Mannion dated July 2, 1981, received here July 9, requesting an opinion as to the application of 12 C.F.R. 7.7016 to a draft authorization agreement of the type entered into by Chrysler Corporation, Detroit, Michigan, with some national banks. The agreement, a copy of which is enclosed, is labelled "Cash Draft Authorization Letter."

Chrysler has applied to the State of Michigan for permission to establish a commercial bank, Automotive Financial Services, Inc. ("Financial Services") as a wholly owned subsidiary.[1] The bank will replace National Bank of Detroit as the medium through which collection is made of drafts drawn by Chrysler against other banks whose customers are Chrysler retail dealerships.

Upon shipping vehicles to a dealership, Chrysler will draw a draft in payment for the vehicles on the dealer's bank and will deposit the draft in Chrysler's account at Financial Services. Financial Services will then send the draft for collection through the Federal Reserve check collection system, and will receive provisional credit from the Federal Reserve Bank of Chicago ("Chicago Reserve Bank") until the draft is finally paid by the dealer-bank, which is the drawee. Should Chrysler or Financial Services become insolvent, some dealer-banks in this arrangement might choose to dishonor Chrysler's drafts. To protect the Federal Reserve, the Chicago Reserve Bank is negotiating an agreement with Chrysler under which in certain circumstances associated with the failure of Chrysler and Financial Services, the Chicago Reserve Bank would obtain the rights and responsibilities of Financial Services under these drafts, and would therefore be in a position to enforce their payment.

Because early case law suggests that the issuance of third-party guarantees is beyond a national bank's lawful powers under 12 U.S.C. 24,[2] the Federal Reserve is concerned that the draft authorization agreement executed by various national banks for Chrysler's benefit may be found *ultra vires* should litigation develop over the duties of the drawee banks to pay Chrysler drafts upon presentation. Noting that the draft authorization appears not to conform with the first three specifications of 12 C.F.R. 7.7016,[3] the Federal Reserve staff requests an opinion (1) whether the specifications in 12 C.F.R. 7.7016 constitute a legal definition of a valid letter of credit; (2) whether 12 C.F.R. 7.7016 affects the legal authority of a national bank to issue documents that do not conform to the five specifications; (3) whether an instrument not conforming to all the listed specifications would constitute an *ultra vires* guarantee if issued by a national bank when the instrument is otherwise within the bank's powers; (4) whether OCC would consider a draft authorization agreement of the type attached to be an *ultra vires* third-party guarantee.

In our opinion, the draft authorization letter may legally be executed by a national bank under any one of three theories.

First, the instrument may be regarded simply as a contract which national banks are expressly authorized to enter into under 12 U.S.C. 24 (Third). The con-

NOTE: The first enclosure to this letter is not printed here because of space limitations.

[1] By letter dated May 28, 1981, to Chrysler, the Board ruled that Financial Services is not a bank under section 2(c) of the Bank Holding Company Act, 12 U.S.C. 1841(c). This ruling was predicated on Chrysler's commitment that Financial Services will make no commercial loans and will not in any way supply funds to Chrysler except through the payment of dividends to Chrysler and the payment of drafts deposited by Chrysler. The Board's ruling limited the bank's investment activities to the purchase of U.S. government and agency obligations, certificates of deposit and time deposits and repurchase agreements of financial institutions with respect thereto. The bank was prohibited from purchasing commercial paper or bankers acceptances since such instruments could be used as substitutes for commercial loans. See also the Board's letter of March 11, 1981, to counsel for Gulf and Western Corp. concerning the acquisition by its subsidiary, Associates First Capital Corp., of Fidelity National Bank, Concord, California.

[2] See *Border National Bank v. American National Bank*, 282 F. 73, 77 (5th Cir.), *cert. denied*, 260 U.S. 701 (1922); *Merchants' Bank of Valdosta v. Baird*, 160 F. 642, 645 (8th Cir. 1908).

[3] The first three specifications call for a letter of credit to (1) state conspicuously that it is a letter of credit or be conspicuously entitled as such, (2) contain a specified expiration date or be for a definite term, and (3) be limited in amount. With respect to (2), the Chrysler draft authorization letter allows the bank to suspend or terminate "at any time" Chrysler's authority to draw on the bank and the latter's unconditional obligation to pay. However, "such suspension or termination shall not become effective until the close of [Chrysler's] first business day following receipt of such notice by [Chrysler]."

tract is in the nature of a commitment to lend, which banks commonly make to assure a borrower of credit availability. In this particular case, the commitment reflects the bank's prior decision to extend credit to an automobile dealership for the purpose of financing its inventory. In the banking profession this type of lending is known as "floor plan financing" and is widely used to allow dealers in "big ticket" items to maintain inventory. Not uncommonly, the bank takes a security interest in, or effectively holds title to, the goods until sale, at which point the dealer must pay a percentage of the sale proceeds to the bank. Since the bank is limited in the amount of credit it can extend to the dealer by the lending limits in 12 U.S.C. 84, the bank's commitment to Chrysler to pay the latter's drafts is similarly limited.

Second, while we do not believe that Chrysler's draft authorization agreement should be considered a guarantee in the sense that the bank is secondarily liable for the dealer's obligations,[4] the instrument is not *ultra vires* for a national bank to sign even if it were properly found to be a guarantee. Not all guarantees issued by a national bank are *ultra vires*. See, *e.g., Wichita Eagle & Beacon Publishing Co.* v. *Pacific Nat'l Bank*, 493 F.2d 1285 (9th Cir. 1974) (national bank's guarantee enforced). Indeed, statutory law does not expressly permit or prohibit national banks from becoming guarantors, and one of the Comptroller's published interpretive rulings, 12 C.F.R. 7.7010, plainly provides that a national bank

> . . . may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor, if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the bank's total potential liability.

This ruling is based on case law. See *Dunn* v. *McCoy*, 113 F.2d 587, 589 (3d Cir. 1940); *J. L. Mott Iron Works* v. *Kaiser Co.*, 131 S.C. 394, 103 S.E. 783, 786-787 (1920); and *Southern Exchange Bank* v. *First Nat'l Bank of Dublin*, 37 Ga. App. 645, 141 S.E. 323, 326 (1928). *See also* OCC Interpretive Letter No. 79, Commerce Clearing House, *Federal Banking Law Reporter*, ¶ 85,154, superseded by OCC Interpretive Letter No. 177, Commerce Clearing House, *Federal Banking Law Reporter*, ¶ 85,258.

In our opinion, the first test laid out in 12 C.F.R. 7.7010 is met in this situation. The bank has a "substantial interest in the performance of the transaction involved" because it is providing floor plan financing to the automobile dealership. The bank's guarantee serves to advance its own interest in making profitable loans. For these reasons, I believe a national bank may lawfully execute the Chrysler draft authorization agreement even if it is considered a guarantee.

Third, the draft authorization agreement may constitute a valid letter of credit under Article 5 of the Uniform Commercial Code. While arguments can be made that it should not be so regarded,[5] the instrument appears to meet the definition of "letter of credit" in UCC 5-103(1)(a) and fall within the scope of Article 5 as defined in 5-102(1)(a). Moreover, a comparable instrument drafted by Chrysler has been found to be a letter of credit by one court. In *Chrysler Motors Corp.* v. *Florida Nat'l Bank at Gainesville*, Civ. No. 75-63-CA (Cir. Ct. of Alachua Cty, Fla., judgment filed July 19, 1978), the court noted in its Conclusions of Law that it had "previously ruled in these proceedings that the payment authorization and cash draft authorization issued by the bank constituted letters of credit." Although the trial court's judgment was subsequently reversed by the Florida District Court of Appeals, the appellate court did not alter the lower court's characterization of the cash draft authorization, referring repeatedly to it as a letter of credit. *Chrysler Motors Corp.* v. *Florida National Bank at Gainesville*, 382 So.2d 32 (Fla. Dist. Ct. App. 1980). On motion for rehearing and clarification, the court declared Chrysler's cash draft authorization to be a "clean" letter of credit. 382 So.2d at 39.

Assuming that the cash draft authorization can be regarded as a letter of credit, we confirm that the specifications listed in 12 C.F.R. 7.7016 do not constitute a legal definition of a letter of credit, and that section 7.7016 does not affect the legal authority of a national bank to issue documents not conforming to the five specifications. As the language of the ruling makes clear, the five specifications address regulatory concerns of safety and soundness and are supervisory in nature rather than an attempt to establish a federal common law of letters of credit. One of the primary purposes of the 1977 revision was to clarify that national banks should not maintain that their failure to abide by the five standards made their letters of credit legally unenforceable. Instead, according to OCC, the revised ruling

> makes clear that, while national banks for safe and sound banking purposes should issue their letters of credit in conformity with the ruling's standards, the determination of a letter of credit's legality and whether it should be honored is governed solely by statutory law, such as the Uniform Commercial Code, or by convention, such as the Uniform Customs and Practices for Documentary Credits.
> (42 Fed. Reg. 24206 (1977))

Even before the revision to 12 C.F.R. 7.7016 was proposed, OCC had expressed the same opinion to counsel to a national bank concerning Chrysler's draft authorization agreement. See the enclosed letter dated June 25, 1975, addressed to bank counsel in Gaines-

[4] The most recent discussion of the nature of a guarantee as opposed to a standby letter of credit is found in *Republic Nat'l Bank of Dallas* v. *Northwest Nat'l Bank of Fort Worth*, 578 S.W.2d 109 (Tex. Sup. Ct. 1978), *rev'g* 566 S.W.2d 358 (Tex. Civ. App. 1978).

[5] The instrument has apparently not been viewed by Chrysler as a letter of credit during the 30-odd years it has been used. Since custom and usage of the parties is an important consideration, UCC 1-102(2)(b), grounds may exist for interpreting the instrument as something other than a letter of credit. On the other hand, a similar draft authorization form used by Ford Motor Co. describes itself as a letter of credit, and a General Motors form, while not so labelled, employs language notably similar to bank letters of credit.

ville, Florida, from Deputy Comptroller Thomas G. DeShazo.

We can also confirm that an instrument not conforming to all the specifications in 12 C.F.R. 7.7016 would not constitute an *ultra vires* guarantee if otherwise within a national bank's legal authority. This follows from our belief that the UCC and the Uniform Customs should govern whether a document is a letter of credit. If the document meets the terms of UCC 5-102 and 5-103(1)(a), it would be a valid commitment by the bank notwithstanding the absence of one or more of the characteristics specified in 12 C.F.R. 7.7016. This point was illustrated in *Barclays Bank* v. *Mercantile Nat'l Bank*, 481 F.2d 1224 (5th Cir. 1973), where Mercantile argued that its letter of credit was an *ultra vires* guaranty because no fee was charged for its issuance, contrary to one of the specifications then found in 12 C.F.R. 7.7016. The court dismissed the contention on the ground that UCC 5-105 provides expressly to the contrary. 481 F.2d at 1239 & n. 22. This suggests that the courts will use the UCC standards rather than the OCC ruling to determine whether a document is an enforceable letter of credit.

Finally, OCC would not consider a draft authorization agreement of the type enclosed as an *ultra vires* third-party guarantee. As indicated above, the instrument may be considered to be a contract, a lawful guarantee, or a letter of credit. Regardless of the label applied, we would not regard the issuance of such a document in conjunction with floor plan financing to be *ultra vires*.

John M. Miller
Deputy Chief Counsel

ENCLOSURE

June 25, 1975

James S. Quincey, Esquire
Clayton, Duncan, Johnston, Clayton,
Quincey, Ireland & Felder
P.O. Box 1090
Gainesville, Florida 32602

Re: Florida National Bank at Gainesville
Gainesville, Florida

Dear Mr. Quincey:

This refers to your letter of May 22, 1975, to our regional office in Atlanta, Georgia, with reference to 12 C.F.R. 7.7016.

As counsel for subject, you are currently involved in the defense of a suit wherein the beneficiary of a "Cash Draft Authorization" has sued the bank for its failure to honor drafts drawn thereunder. The instrument in question was issued by the bank in favor of Chrysler Motor Corporation for the account of Recreational Enterprises Corporation in connection with the shipment of automobiles. Because the document does not give a specified expiration date and may arguably not contain a maximum amount, you ask for our opinion of the legal consequences in light of 12 C.F.R. 7.7016.

A final determination of whether a particular instrument constitutes a valid letter of credit and what liabilities the issuer is subject to for its failure to honor drafts drawn thereunder, should be made by a court and not by this Office. Certain language in 12 C.F.R. 7.7016 may suggest that a document not complying with the five specified characteristics must be regarded as an ultra vires guaranty and not as a true letter of credit. However, we think the ruling should be viewed only as establishing certain guidelines for the safe and prudent issuance of letters of credit by national banks, not as an attempt to define what a letter of credit is or is not. Whether a document is a letter of credit should be determined under Article Five of the Uniform Commercial Code (see Florida Statutes Annotated §§675.5-102 and 675.5-103), and not by our ruling alone.

A similar issue arose recently in *Barclays Bank* v. *Mercantile National Bank*, 481 F. 2d 1224 (5th Cir. 1973), where Mercantile argued that its letter of credit was an ultra vires guaranty because no fee was charged by the bank, contrary to one of the specifications in Interpretive Ruling 7.7016. Without mentioning the ruling, the court dismissed this contention. 481 F. 2d at 1239 & n. 22. This suggests that the courts will use the UCC standards rather than our Interpretive Ruling to determine whether an instrument is a true letter of credit. We think this is proper and not inconsistent with our ruling, which, in spite of certain language therein, was designed principally to furnish guidelines to national banks for the safe and sound conduct of their business.

Very truly yours,

Thomas G. DeShazo
Deputy Comptroller of the Currency

* * *

215—August 28, 1981

This responds to your July 13, 1981 letter addressed to Andrew J. Levinson, Senior Attorney. You note that under the Federal Home Loan Mortgage Corporation's (FHLMC) adjustable-rate mortgage program a lending institution may round the amount of the change in the index when calculating the new interest rate on an interest rate change notification date. You question whether a national bank, which makes a mortgage loan under the provisions of the Comptroller's Adjustable Rate Mortgage Regulation (ARM), 12 C.F.R. Part 29, may comply with the rounding provision contained in the FHLMC note.

Under section 29.5(c) of the ARM regulation, a bank may establish minimum increments for interest rate changes. In addition, the regulations provide that:

> Changes in the interest charged on an adjustable-rate mortgage loan must be linked to changes in an index specified in the loan documents [illegible]

1 basis point (1 basis point = .01 percentage point) change in the index must be translated into a 1 basis point change of the same direction in the contract interest rate, except as otherwise provided in section 29.5
(12 C.F.R. § 29.4)

The method of change provided was designed for (1) administrative simplicity and (2) fairness both to the bank and the borrower, so that neither the bank nor the borrower would benefit at the expense of the other party. The regulation translates a change in the index rate into a change in the interest rate on the adjustable-rate mortgage loan. The regulation, however, does not specify how to measure the basis point change in the index.

Because the regulation does not specify a specific method of measuring the basis point changes in the index value and does not prohibit rounding, this Office would not object to a bank rounding an index rate change to the nearest 1/8 or 1/10 of 1 percent provided that the method of rounding is consistent with the basic policy of administrative simplicity and fairness. We would, however, require a bank that chooses to round the index rate to carry over the rounded portion to the next rate change. For example, if the rate change is .16 percent and the bank rounds this to .20 percent, the bank must subtract the additional .04 percent at the next interest rate change date. Under section 29.8(a)(5) of the regulation the bank must disclose to the borrower its method of rounding.

Please note that this Office is considering technical amendments to the adjustable-rate mortgage regulation which may clarify this question directly. I trust this has been responsive to your inquiry.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

216—September 8, 1981

This responds to your letter dated October 27, 1980, to Richard Fitzgerald, Director, Legal Advisory Services Division, which has been referred to me. You request a ruling that a national bank, under its general lending powers, is permitted to make a shared appreciation mortgage ("SAM"). I apologize for the delay in this response. Our consideration of this issue in the context of our recently issued adjustable-rate mortgage regulation ("ARM"), 12 C.F.R. Part 29, took longer than expected.

You state that your SAM program generally would be in accordance with proposed regulations of the Federal Home Loan Bank Board (FHLBB). A SAM under these proposed regulations bears a fixed interest rate below the prevailing market rate over the life of the loan, and contingent interest based on the appreciation of the property securing the loan. The share of the appreciation payable as contingent interest would be determined at the beginning of the loan and would not exceed 40 percent of net appreciation. 45 Fed. Reg. 66,801 (1980).

The purposes for which national banks may "purchase, hold and convey real estate" are set forth in 12 U.S.C. § 29. That section is intended, *inter alia*, to prevent national banks from speculating on real estate by prohibiting the holding of real estate—except property used in the bank's business or taken in satisfaction of previously contracted debts and held for limited periods. Therefore, if the making of a SAM is considered to be the purchase, holding, or conveyance of real estate, a national bank would be prohibited from engaging in such a transaction.

In my opinion, the making of a SAM would not constitute the purchase, holding or conveyance of real estate within the meaning of 12 U.S.C. § 29 where the bank does not obtain a present or future possessory interest in real property. Instead, the bank would expect to receive an amount of money *as interest*. The amount of money to be received would be measured as a contingent share of the expected future appreciation of the encumbered property. More importantly, the bank would not risk, in the absence of default, loss on the principal of its loan even if the property should decline in value.

This Office has long held that a national bank may take an amount of money measured as a share in the profits of an enterprise in lieu of or in addition to the interest it receives on a loan, so long as repayment of loan principal is contractually assured. *See* Interpretive Ruling 7.7312, 12 C.F.R. § 7.7312 (1981). The fact that passive ownership of real property by the bank's customer is involved rather than the active conduct of a business enterprise is immaterial. The transaction merely would be a contract between the bank and the mortgagor in which the mortgagor agrees to pay, at a future date, an amount of interest which is determined by independent outside factors, *i.e.*, the increase in the value of the property at a given date or event. Under the FHLBB's proposed regulation, the amount of contingent interest would come from net profits of ownership and, therefore, would be consistent with I.R. 7.7312. A SAM should be treated in the same manner as a conventional mortgage; therefore, all rules and regulations applicable to conventional mortgages also are applicable to SAMs.

These SAM plans may raise complex legal issues. Because you have not submitted a specific plan, we have been able to offer only general guidance. Due to the complexity of some SAM programs, you may wish to review specific features of your program with this Office or our regional staff in Denver. I trust this has been responsive to your inquiry.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

217—October 8, 1981

Thank you for your letter of September 21, 1981, acknowledged by our staff on October 6, 1981, asking whether a national bank is authorized by law or regulations to obtain a license to sell property and casualty insurance. Your letter indicates that the *** Department of Insurance is considering promulgating a regulation which would establish minimum standards to be followed by financial institutions and their affiliates to enable persons to obtain property and casualty insurance in connection with an extension of credit.

National banks located and doing business in any place the population of which does not exceed 5,000 persons, as shown by the last preceding decennial census, may act as agent for any insurance company regardless of whether the insurance is sold in connection with a loan transaction. The authorization is found in 12 U.S.C. 92, which was enacted in 1916 for the purpose of providing national banks in small towns with "additional income . . . to strengthen them and increase their ability to make a fair return to their shareholders. . . " 53 *Congressional Record* 11001 (quotation from a letter by Comptroller of the Currency John Skelton Williams). One of the Comptroller's interpretive rulings, 12 C.F.R. 7.7100, also provides that any office of a national bank may exercise this authority if the office is located in a community having a population of less than 5,000 even though the bank's principal office is located in a community exceeding 5,000.

As far as national banks located in towns exceeding 5,000 persons are concerned, the matter is more complex. Prior to 1968, the Comptroller authorized national banks in Ruling No. 7110 to "act as agent in the issuance of insurance which is incident to banking transactions." The ruling went on to state that "Commissions received therefrom or service charges imposed therefor may be retained by the bank." However, this ruling was invalidated by the U.S. Court of Appeals for the Fifth Circuit in *Saxon* v. *Georgia Ass'n of Independent Insurance Agents*, 399 F.2d 1010 (5th Cir. 1968), which involved a national bank's acting as agent for the sale of property and liability insurance on collateral securing loans, such as fire and homeowner's protection on houses mortgaged to the bank and collision and liability insurance on automobiles financed by the bank. As a result of this court decision, the Comptroller withdrew Ruling No. 7110, and it has generally been assumed, at least within the states covered by the Fifth Circuit, that a national bank in a town of more than 5,000 persons cannot act as agent for anything more than conventional credit life insurance.

In 1979, the U.S. Court of Appeals for the District of Columbia in *Independent Bankers Ass'n* v. *Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), refused to interpret 12 U.S.C. 92 as impliedly prohibiting national banks in places exceeding 5,000 from acting as agent for the sale of or otherwise selling credit life, health and accident insurance as authorized by the Comptroller's regulations, 12 C.F.R. 2.6. See 613 F.2d at 1169-1170. Instead, the court construed the "incidental powers clause" in 12 U.S.C. 24 (Seventh) as permitting this activity. On the basis of this decision and the Federal Reserve's construction of the "closely related to banking . . . " language of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8), it might be possible to argue that national banks in places exceeding 5,000 can legally act as agent for the sale of property and casualty insurance provided the insurance is sold in conjunction with a loan. However, no determination on this issue has been made by the Comptroller's Office. Because of the uncertainty surrounding this issue, most national banks in towns exceeding 5,000 wishing to offer property and casualty insurance to loan customers have done so through their holding companies, which are expressly authorized by Federal Reserve regulations to engage in this activity, 12 C.F.R. 225.4(a)(9) and 225.128, if state law permits.

I hope the above will be helpful. Please let us know if we can be of further assistance.

Charles E. Lord
Acting Comptroller of the Currency

* * *

218—September 16, 1981

This responds to your letter of September 1, 1981, asking for guidance on whether a national bank may issue a bill of lading guarantee (sometimes referred to as a letter of indemnity) on behalf of a customer with whom the bank maintains a "debtor-creditor relationship" even though the shipment involved is not financed by a letter of credit issued by that bank. Specifically, you ask:

1. If a bank has extensions of credit to a customer and is also handling a documentary collection for the customer, can the bank issue a Bill of Lading Guarantee at the request of the customer?
2. Does it matter if the extensions of credit are for accounts receivable and inventory? . . . import financing? . . . and/or are secured by accounts receivable and inventory (where the subject imported goods will be included in the collateral pool)?

Background

The bill of lading guarantee is executed primarily in connection with an import transaction where the goods arrive before the bill of lading or other title documents or where the documents are faulty or incomplete. To enable its customer (the importer) to obtain possession of the goods promptly, the bank issues a bill of lading guarantee to the shipper agreeing to hold the latter harmless for releasing the goods to the bank's customer should someone else subsequently show up with the proper documents. The guarantee is cancelled upon the arrival of the bill of lading.

It is not uncommon for a bank to issue a bill of lading guarantee when the bank has previously issued a letter of credit for the customer's account to finance the import. The guarantee serves to facilitate the liquida

tion of the goods thereby providing the customer funds with which to repay the bank for drafts it will pay or has paid. Under these circumstances, our legal staff has previously concluded that the bill of lading guarantee is permissible under 12 C.F.R. 7.7010 since the bank clearly has a "substantial interest in the performance of the transaction involved." Moreover, the Uniform Commercial Code approves the use of bank-issued indemnities of this kind in letter of credit transactions. See UCC 5-113.

In recent years, some banks have issued bill of lading guarantees to established customers even though the shipment in question was not financed through a letter of credit issued by that bank. For example, the importer and exporter may be so well acquainted from prior dealings that a letter of credit is not required and payment is contemplated in cash from a line of credit for working capital purposes or inventory accumulation. If the goods arrive prior to the bill of lading, must the bank turn down its customer's request for a bill of lading guarantee even though the bank is thoroughly conversant with the customer's credit standing and maintains a lending relationship with him?

Discussion

As you noted, our Law Department has previously concluded that 12 C.F.R. 7.7010 prohibits the U.S. head office or domestic branch of a national bank from offering a bill of lading guarantee in favor of a customer with whom it has no letter of credit "or other debtor-creditor relationship." In my opinion, the relationships posed in your second question meet the "debtor-creditor relationship" criterion since the credit is extended for purposes that contemplate inventory accumulation through imports and subsequent liquidation. In addition, a bill of lading guarantee would be permissible in any instance where the imported goods will be included in the collateral pool. I also believe that an extension of credit for working capital purposes is a sufficient basis for issuing a bill of lading guarantee. On the other hand, I am more skeptical about whether a bill of lading guarantee should be issued on behalf of a customer whose debtor-creditor relationship with the bank is a construction loan, since the purposes of such a loan would not contemplate importation of goods. In short, there should be some nexus between the debtor-creditor relationship and the importation of goods. This will help in demonstrating a benefit to the bank stemming from the guarantee. Such a showing is required under some court decisions sustaining guarantees issued by national banks. See *American Surety Co. v. Philippine National Bank*, 156 N.E. 634, 638-9 (N.Y. 1927), and cases therein cited. Moreover, such a requirement is implicit in the present wording of 12 C.F.R. 7.7010.

In addition to the nexus described above, our concern for safety and soundness will be satisfied if the bank at the time the bill of lading guarantee is issued (a) possesses current financial information on the customer and (b) performs a credit analysis of the impact on the customer if the bank must obtain reimbursement for amounts paid out under the guarantee. See 12 C.F.R. 7.1160. We do not believe that participations should be sold in the guarantee.

*   *   *   *   *

The discussion above represents about the most flexible rule that can be derived from case law and the present wording of 12 C.F.R. 7.7010. Nevertheless, it is not truly satisfactory from a policy standpoint. A national bank ought to be able to issue a guarantee of any kind as long as it has done a credit analysis on the account party. These standards would satisfy safety and soundness concerns of the regulator and would allow the bank more flexibility in serving its customer. Domestic banking practice would then be consistent with the powers conferred on foreign branches of U.S. banks by Federal Reserve Regulation K, 12 C.F.R. 211.3(b)(1), and with the powers of many foreign banks.

While the old case law cannot be completely dismissed, evidence has been increasing that traditional notions about the *ultra vires* character of bank-issued guarantees are breaking down. Only last month the Federal Reserve Board approved as closely related to banking and a proper incident thereto the activity of authorizing checks for cardholder customers and guaranteeing their payment to merchants who accepted them. See *Citicorp*, Order Approving Retail Check Authorization and Check Guarantee Activities (August 3, 1981). The Comptroller's office has approved the same activity. Commerce Clearing House, *Federal Banking Law Reporter*, §85,001 (staff letter of Aug. 2, 1977). See also OCC Interpretive Letter No. 177, Commerce Clearing House, *Federal Banking Law Reporter*, §85,258, superseding OCC Interpretive Letter No. 79, Commerce Clearing House, *Federal Banking Law Reporter*, §85,154 (bank agreement to repay certain deposits is not *ultra vires* guarantee). These developments suggest that the rule is being devoured by the exceptions engrafted on it.* The same observation was made in a recent law review article, which also explored the flimsy origins of the idea that a national bank cannot guarantee contracts made by others. Lord, *The No-Guaranty Rule and the Standby Letter of Credit Controversy*, 96 *Banking Law Journal*, 46, 57-60 (1979).

Finally, it is worth noting that at least one appellate court has ordered the enforcement of a bank-issued guarantee. In *Wichita Eagle & Beacon Publishing Co. v. Pacific Nat'l Bank*, 493 F.2d 1285 (9th Cir. 1974), the court declared a national bank's letter of credit to be a guarantee but ordered it to be paid nevertheless. Years before, the same court, in *Bowen v. Needles National Bank*, 94 F. 925 (9th Cir. 1899), had said:

> It may be stated in general that no banking corporation has the power to become a guarantor of the obligation of another, or to lend its credit to any

* Other exceptions to the rule may be found in *Dunn v. McCoy*, 113 F.2d 587, 589 (3d Cir. 1940), *Southern Exchange Bank v. First Nat'l Bank of Dublin*, 141 S.E. 323, 326 (Ga. App. 1928), *American Surety Co. v. Philippine Nat'l Bank*, 245 N.Y. 116, 156 N.E. 634 (1927), and *J. L. Mott Iron Works v. Kaiser Co.*, 103 S.E. 783, 786-787 (S.C. 1920).

person or corporation, unless its charter or governing statute expressly permits it.
(94 F. at 927)

This court's change in attitude and decisions in other circuits suggest that no contemporary court will allow a bank to avoid making payment on its own guarantee on *ultra vires* grounds.

I hope the above is responsive to your inquiry.

Ford Barrett
Assistant Chief Counsel

* * *

219—September 28, 1981

This responds to your letter of September 4, 1981, concerning the issuance of a standby letter of credit by a holding company's lead bank at the request of an affiliate bank for the benefit of the affiliate bank's customer.

According to your letter, the lead bank is occasionally asked to issue a standby letter of credit for the customer of an affiliate because the affiliate lacks expertise in this area. The purpose of some of the standby credits is to support promissory notes held by partnerships. Under current procedures, the lead bank issues the letter of credit on its own letterhead and obtains collateral of the type required by 12 U.S.C. 371c and 12 C.F.R. 7.7361. The affiliate bank is not mentioned on the letter of credit.

Because it is sometimes difficult to obtain collateral complying with 12 U.S.C. 371c, the lead bank would like to alter this arrangement. The lead bank would continue to issue the standby credit on its letterhead, and the affiliate would remain responsible for the credit investigation. To avoid the collateral requirements, the lead bank would give a 100% participation to the affiliate in the form of a participation certificate wherein the affiliate agrees:

1. To assume full responsibility for the risk;
2. To pay the lead bank on demand should the standby letter of credit be drawn on;
3. That the lead bank is acting only as an "agent" bank;
4. That the responsibility and liability for the standby credit belongs to the affiliate bank.

Unlike the direct loan participation where each participant advances funds, the standby letter of credit participation with the affiliate bank would not involve any transfer of funds between the two banks, since the letter of credit would not have been drawn on at this point. If a draw does subsequently take place, the lead bank would credit the beneficiary of the letter of credit and debit the affiliate bank's account, and the affiliate in turn would debit its customer/account party. The lead bank would book the item internally on its general ledger as a "participation sold" and not as a liability.

* * * *

As you know, the Comptroller's Office issued an opinion to your bank dated October 5, 1978, on a closely related proposal. (This opinion has been published as OCC Interpretive Letter No. 57, Commerce Clearing House, *Federal Banking Law Reporter*, § 85,132.) There, the arrangement was the same except that the affiliate indemnified the lead bank through a guarantee, instead of acquiring a participation certificate. After questioning the use of a guarantee in this fashion, the OCC opinion concluded that the transaction is subject to 12 C.F.R. 7.7361 and 12 U.S.C. 371c because the lead bank is relying on its affiliate to make repayment.

In our judgment, the use of the participation certificate does not alter the fact that the lead bank is legally obligated as issuer of the letter of credit to pay if there is a draw. Moreover, the lead bank is relying on its affiliate for repayment. Under these circumstances, we continue to think that the lead bank is issuing the letter of credit "on behalf of an affiliate," as that language is used in 12 C.F.R. 7.7361.

We agree that a bank issuing a standby letter of credit may reduce the amount chargeable to its 12 U.S.C. 84 lending limit to the account party by issuing a non-recourse participation. See footnote 2 of 12 C.F.R. 7.1160. However, if the participant is an affiliate, the participation does not reduce the amount of the standby letter of credit subject to 12 U.S.C. 371c where the affiliate remains liable to repay the issuing bank. As indicated above, such a participation does not remove the legal obligation of the issuing bank to pay a properly presented draft for the full amount of the letter of credit. Neither does it remove the obligation of the affiliate to pay the issuing bank.

From the above, it is apparent that just because a participation may reduce or eliminate the amount chargeable to the bank's 12 U.S.C. 84 lending limit, the requirements of 12 U.S.C. 371c are not mitigated. Another example of this rule appeared in an April 1976 staff letter, where we stated that while cash collateral will exempt standby letters of credit issued on behalf of an affiliate from the lending limits, it does not provide an exemption from 12 C.F.R. 7.7361 and 12 U.S.C. 371c.

Rather than approach the transaction in the way you have proposed, we suggest that the lead bank provide, perhaps for a fee, its affiliates with appropriate standby letter of credit forms on their own stationery. Some training in the more esoteric aspects of standby letters of credit could also be furnished. Credit analysis of the account party is the heart of the matter, but the affiliate will continue doing that anyway. By providing forms and training, the lead bank will be able to generate fee income without having to go to the trouble of issuing the standby credit, obtaining qualifying collateral and creating participation certificates.

Ford Barrett
Assistant Chief Counsel

* * *

220—August 3, 1981

This is in response to your letter of April 1, 1981 concerning the interpretation of the words "finance" and "refinance" in this Office's adjustable-rate mortgage (ARM) regulations (12 C.F.R. § 29). Please excuse the delay in responding.

The first question you ask is whether the ARM regulation covers a situation in which the owner of a dwelling owns his home "free and clear" of any mortgage at the time he applies to a national bank for an ARM loan. As you are aware, the regulation defines an adjustable-rate mortgage as a "loan made to finance and refinance the *purchase of* and secured by a lien on a one- to four-family dwelling. . . ." 12 C.F.R. § 29.2 (emphasis added). You are correct in stating that this definition does not cover a situation in which the owner of the dwelling owns his home free and clear of any mortgage at the time he applies to a national bank for an ARM loan on his home.

You also ask whether the ARM regulations apply to the following situations:

1. The purchase of a 1-4 family house, condominium unit, cooperative apartment or mobile home.
2. The refinance of a dwelling in the above categories if:

   (a) the original purchase money mortgage at another institution is to be paid off from the new ARM proceeds.
   (b) the original purchase money mortgage at another institution will be taken by assignment by the national bank and consolidated with a new mortgage loan to form a consolidated ARM loan.
   (c) the original purchase money mortgage was made by the national bank and paid off out of the proceeds of the new ARM loan.
   (d) the original purchase money mortgage was made by the national bank and consolidated with a new loan to form a consolidated ARM loan
   (e) the national bank disbursed a second mortgage drawn pursuant to ARM regulations in lieu of consolidating a new mortgage with the existing prior purchase money mortgage

Assuming that there is an outstanding loan balance on the existing mortgage, the first five hypothetical situations (1 and 2a-2d) are covered by the adjustable-rate mortgage regulations, since they are all either financing or refinancing the purchase of one- to four-family dwellings as specified by 12 C.F.R. § 29.2. The final situation you describe (2e) appears to fall outside the definition, since there is apparently an outstanding purchase money mortgage lien against the property that will not be disturbed or in some way recast by the bank's second lien loan, and the proceeds of the bank's loan will not be used to finance the purchase of the property but rather for another purpose, such as home improvement, investment, or consumer purposes.

I hope this has been responsive to your inquiry. If you have any additional questions, please contact Mr. Francis S. Rath at (202) 447-1880

Andrew J. Levinson
Senior Attorney
Legal Advisory Services Division

* * *

221—September 23, 1981

This is in response to your letter of July 7, 1981, to the Chief National Bank Examiner, Office of the Comptroller of the Currency, asking approval of your mortgage program.

In brief, your program provides for a loan interest rate 2 percentage points higher than the rate actually being charged on similar loans, with a monthly payment adequate to amortize the loan within the stipulated time at the maximum interest rate written in the note. The interest rate charged can be reduced or increased at the bank's discretion but can never be increased higher than the initial rate. You requested that this program not be considered an adjustable-rate mortgage as defined in 12 C.F.R. § 29 and that the program be approved without change.

The ARM regulation defines an adjustable-rate mortgage loan as

> any loan made to finance or refinance the purchase of and secured by a lien on a one-to-four family dwelling . . . where such loan is made pursuant to an agreement intended to enable the lender to adjust the rate of interest from time to time.
> (12 C.F.R. §29.2)

If the loan is made with an intent to adjust the interest rate and the loan otherwise conforms to the definition in § 29.2, it will be deemed to be an ARM. Such intent can be evidenced in the case of a loan ostensibly written as a fixed-rate mortgage loan by, *inter alia*, an interest rate materially in excess of the fair market rate, the bank's marketing the loan as having an adjustable-rate feature, and statements in the bank's loan documents indicating or implying such an intent.

In the program outlined in your letter, the initial interest rate is above the fair market rate and a loan information statement given to borrowers indicates that rates may be adjusted below that rate. Further, your letter to us states that customers are willing to accept such loans carrying above-market interest rates because they have expectations of lower rates if the bank's cost of funds declines. All of these factors combine to indicate an intent on the part of the bank, and communicated to borrowers, to arbitrarily adjust interest rates from time to time. Therefore, your proposed program would be considered an adjustable-rate mortgage and would be subject to the Comptroller's ARM regulation

It should be noted, however, that you could offer essentially the same loan in either of two ways. First, you could offer a conventional fixed-rate mortgage at a market rate. So long as the bank in no way communicates with the borrower in a manner that gives rise to a reasonable expectation that the interest rate on the loan is likely to be reduced in the future, this Office would not object to the bank's at some time waiving or forbearing from some portion of the interest due on the loan. A bank can always waive, at its discretion or according to a predetermined schedule, a portion of the interest due on any loans. Such waiver would not have to be for a specific period of time and could be rescinded. Adequate disclosure of such a waiver would, of course, have to be made to the borrower. This disclosure would have to include notice that the waiver is not permanent and, when and if rescinded, the interest rate and installment payment amount will revert to the levels specified or implied in the loan note. Alternatively, a bank could offer an ARM pursuant to our regulation and simply forego any rate increases.

I hope this has been responsive to your inquiry.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

222—September 11, 1981

This is in response to your letter dated May 27, 1981, in which you request this Office's opinion on five questions concerning the adjustable-rate mortgage regulation ("ARM"), 12 C.F.R. Part 29.

> 1. Are combination construction/permanent loans for residential mortgages permitted under the Comptroller's regulations for adjustable rate mortgages?

In the event that the same lender intends to loan funds for construction and for permanent financing, this would be permitted under the ARM regulation. The construction portion of the loan would not itself be subject to the ARM regulation as long as the borrower has a written commitment for permanent financing. This commitment may involve the same institution which makes the construction loan.

> 2. If the answer to Question 1 is "yes," may such combination construction/permanent loans have a maturity date of thirty (30) years plus the period of construction [not to exceed sixty (60) months]? In particular, we request guidance as to whether 12 USC § 371 and Interpretive Ruling 7.2125 and 7.2400 and 7.2405 pertaining to real estate loans, construction loans and combination loans are applicable to adjustable rate mortgage loans as well as to fixed rate mortgage loans?

Combination construction/permanent loans may be made for a period up to 30 years and 60 months. According to Interpretive Ruling 7.2405, 12 C.F.R. § 7.2405 (1981):

> A national bank may make a combined construction and permanent loan secured by residential, farm, industrial or commercial property for a period up to 30 years and 60 months. Section 371 does not require that interim and permanent financing be made separately.

The second part of your second question asks whether 12 U.S.C. § 371 and the three Interpretive Rulings you list are applicable to adjustable as well as fixed-rate mortgage loans. The answer is "yes." I am not aware of any inconsistencies between the ARM regulation and the statute and Interpretive Rulings. Section 29.5(d) of the ARM regulation authorizes national banks to implement interest rate changes to an adjustable-rate mortgage loan through changes in the amount of the installment payment or the rate of amortization. Changes in the rate of amortization may be implemented only if the requirements of section 29.5(d)(2) are met.

These requirements essentially demand that, on balance, installment payments be required that will be sufficient to amortize the loan fully over a period not exceeding 30 years, even though the installment payment amount at any point in time might fall short of the fully amortizing level. The general requirements relating to amortization of real estate loans provided in I.R. 7.2125, 12 C.F.R. § 7.2125 (1981), are consistent with this rule.

> 3. If the answers to Questions 1 and 2 above are both "yes" and such loans are permitted, may the construction period also contain adjustable rate mortgage features [assuming that such period is longer than six (6) months]?

As I have mentioned, the construction portion of the loan—which under I.R. 7.2410 (12 C.F.R. § 7.2410 (1981)) may not exceed 60 months—is not subject to the ARM regulation unless the borrower fails to obtain a loan commitment covering the permanent loan. In other words, the construction period may contain adjustable-rate features; the lender would not, however, be limited by the provisions of the ARM regulation during the construction period.

> 4. Assuming that the lender does not request adjustments during the construction loan period, may the construction loan period be included when calculating the permissible change at the first change date? By this we mean, assuming the construction period to be six (6) months or longer and assuming the first rate change to occur more than one (1) year after commencement of amortization, may the construction period which is in excess of one (1) full six (6) month period be included in determining the permissible change in interest rate at the time of the initial interest rate adjustment?

Where there is a permanent financing commitment, the period of construction is not subject to the ARM regulation. Therefore this period of time may not be

considered when the lender calculates the permissible change at the first change date

> 5. In determining the base index rate, (1) must the base index rate be determined on the basis of the date of loan closing of the combination construction/permanent loan, or (2) is the lender permitted to establish in the loan documentation that the base index rate will be the index rate in effect on the date of conversion to permanent loan status, or (3) in the alternative, may a modification of the base index rate be established pursuant to a modification agreement between borrower and lender at the time of the conversion to permanent loan status?

Under section 29.4 of the regulation, the bank must use as a base index rate either the "most recently available value on the date of loan origination" or "the average of index values over an . . . interval [equal to the interval between rate changes] ending with the date of loan origination." In specific answer to your question, the base index rate may not be determined on the basis of the date of loan closing of the combination construction/permanent loan but should be determined on the date of loan origination of the permanent loan. As you note in your second alternative to question five, the lender is permitted to establish that the base index rate will be the index rate in effect on the date of conversion to permanent loan status.

Modification of the base index rate through a modification agreement would not be acceptable. The parties *may*, however, agree to modify a base interest rate for the permanent loan agreed to at the date of closing of the combination loan. Following the period of construction, the bank may wish to increase the originally agreed upon base interest rate. Such an increase would require the consent of both parties.

I trust this has been responsive to your inquiry.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

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223—September 15, 1981

Thank you for your letter of August 10, 1981, concerning an investment by the employee benefit plans of several *** national banks in the Life Insurance Company of ***. Because we intend to send copies of this letter and certain enclosures to three national banks in *** which have made such an investment, we will summarize the background of this matter to facilitate their understanding.

* * * * *

On April 2, 1981, the U.S. Department of Labor issued a ruling on the permissibility under the Employee Retirement Income Security Act of 1974 (ERISA) of an investment by a national bank's employee benefit plan in the Life Insurance Company of *** ("insurance company") when (1) the national bank is selling credit life insurance underwritten or reinsured by that company and receiving commissions, and (2) the profitability of the plan's investment in one particular class of stock depends directly on the underwriting experience of the insurance contracts sold by that national bank. Subsequently, in response to additional material submitted on June 17, 1981, by the insurance company's attorneys, the Labor Department issued another letter dated July 31, 1981.

The investment reviewed by the Labor Department called for the bank's employee benefit plan to purchase a unit consisting of two classes of stock. One class is participating common stock in which $100 is invested, and the other is voting common stock in which $12,500 is invested. The profitability of the plan's investment in the participating common stock depends on the underwriting experience of credit life insurance sold by that particular bank, while the profitability of the investment in the voting common stock depends on the performance of the insurance company as a whole.

The Labor Department's ruling of April 2 does not conclude that such an investment violates ERISA. However, the ruling does express several concerns about whether the investment complies with sections 404(a) and 406(b) of the Act, 29 U.S.C. 1104(a) and 1106(b), respectively. These provisions, which are described in more detail at the top of page 3 of the ruling, generally prohibit self-dealing with plan assets and emphasize the fiduciary's duty to discharge his/her duties solely in the interest of plan beneficiaries. Moreover, the April 2 ruling declines to grant a request by insurance company counsel for an exemption from the prohibition in section 406(b) against acts of self-dealing (see last paragraph on page 6). Finally, after counsel had submitted additional material describing amendments of the insurance company's Articles of Association and Bylaws, the Labor Department in its ruling of July 31, 1981, did not accede to counsel's request that Labor

> comment on each of the points raised in this letter, advising us if the supplemental information provided herewith allays the concerns expressed in your April 2 letter.

Rather, the Labor Department stressed that the plan fiduciary must make this judgment in light of all the facts available.

* * * * *

The Comptroller's Office has studied the Labor Department's ruling with an eye to advising national banks known to have employee benefit plan investments of this type. We are somewhat uncomfortable with the bank's relationship with the insurance company (*i.e.*, the bank receives commissions on credit life sales from the insurance company) and with the fact that the profitability of one class of stock depends directly on the claim experience of the bank whose plan is making the investment. The former may in itself violate sections 404 and 406 of ERISA, especially if the commissions could be retained by the insurance com-

pany for the plan's benefit rather than paid to the bank, and the latter compounds the ties between the bank's fortunes and the fortunes of its plan.

On the other hand, we acknowledge that reasonable people, including lawyers well versed in ERISA, may differ on the issue. Their opinions are entitled to respect, as are the views of plan fiduciaries on whom liability for ERISA violations ultimately rests. Moreover, since the plan's investment in the participating common stock is miniscule in relation to its investment in the voting common stock, the profitability of the investment as a whole does not depend significantly on the bank's underwriting experience, and the amount at risk in the participating common stock ($100) is small.

In light of the above, we suggest that this letter and its enclosures be reviewed by plan fiduciaries, by bank counsel familiar with ERISA and by counsel to the insurance company. If after appropriate deliberation the plan fiduciaries remain of the opinion that the investment complies with ERISA, the Comptroller's Office will not take issue with that judgment. We ask that each bank communicate its decision to us, with a copy to the Regional Administrator of National Banks, 165 Madison Avenue, Suite 800, Memphis, Tennessee 38103.

Dean E. Miller
Deputy Comptroller
Specialized Examinations

* * *

224—November 10, 1981

This is in response to your letters of February 6 and of April 15, 1981, addressed respectively to me and to attorney Victoria Kanawalsky. On behalf of your client, *** ("Bank"), you request our concurrence with your opinion that 12 U.S.C. § 92a(d) does not prohibit Bank's Trust Division from extending check writing privileges to certain trust account beneficiaries as a component of Bank's proposed balance sweeping program. You state that this program contemplates a daily sweep of both principal and income cash balances in participating trust accounts into an appropriate investment vehicle such as a non-affiliated money market fund.[1]

The Bank proposes to allow the trust beneficiaries to write checks against the cash balances held in trust which have not been distributed but to which the beneficiaries are entitled under the governing instrument. I understand the procedures of the check-writing clearing process to be as follows. The beneficiary would telephone the Bank to determine the distributable balance in his trust account. An authorization would be given for a certain amount and an appropriate notation would be made to that person's account. The beneficiary would then write a check in an amount not exceeding the authorized amount. The check would pass through normal banking channels but would have a special identifying number that would associate the check with the particular trust account. These checks would be cleared through a single zero-balance trust account in the commercial department of the Bank. The check would trigger a "subsystem" which would compare the amount of the check against the earlier authorization and prepare a trust cash settlement against the single zero-balance clearing account. You have additionally enumerated two possible methods by which overdrafts might be handled.

We have given due consideration to the arguments set forth in your presentations. However, it is my opinion that the provision allowing the beneficiary to draft against the trust account is not permissible under 12 U.S.C. § 92a(d) due to the language of the statute prohibiting "deposits of current funds subject to check. . . ."

Legislative History

12 U.S.C. § 92a(d) provides that:

> No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Comptroller of the Currency.

This section was originally enacted as part of the 1918 amendment to the Federal Reserve Act. Pub. L. No. 43-6, 11(k), 38 Stat. 251 (1913), *as amended by* Pub. L. No. 218-77, 2, 40 Stat. 967 (1918). The floor debates regarding the amendment were concerned primarily with provisions of the Federal Reserve Act which are now 12 USC 92a(a) and (b), the purpose of which was to establish competitive equality between national and state banks in the exercise of fiduciary powers. 56 *Congressional Record*, 5576-78, 5583-86 (1918). Other provisions of the amendment discussed were generally intended to safeguard the proper execution of the trust and to protect the interests of the beneficiary. *Id.* at 5577. There was no discussion specifically pertaining to the language of section 92a(d), which prohibits "deposits of current funds subject to check."

The only relevant portion of the House Report submitted with the amendment stated:

> These provisions are intended to impose safeguards upon the exercise of these fiduciary

[1] Determining a definition of affiliate in any given transaction depends on the applicable law and what danger is to be prevented. For purposes of this letter affiliate means any entity the bank would be prevented from dealing with under 12 C.F.R. 9.12. This includes, but is not limited to, any money market fund that is owned, sponsored, controlled or advised by your client or any entity that is an affiliate of your client by reason of 12 U.S.C. § 221a or 12 U.S.C. § 371c.

powers by national banks and to have national banks in the exercise of these powers conform as fully as is practicable with State requirements.
(H.R. Rep. No. 479, 65th Cong., 2d Sess. 3 (1917-18))

Case Law

You cite the case of *Carcaba* v. *McNair*, 68 F.2d 795 (5th Cir. 1934) *cert. denied*, 292 U.S. 646 (1934) as support for your first argument that the two sentences in section 92a(d) must be read together to mean that deposits received by the trust department may not be subject to check by *other depositors* of the bank. In *Carcaba*, the bank, as administrator of an estate, collected proceeds from a sale of realty. The title to the realty had vested in the estate beneficiaries upon death of the decedent and therefore was not part of the estate being administered. One question considered by the court was whether the proceeds were received by the bank in a fiduciary capacity such that the estate beneficiaries had a claim to securities which were required to be deposited with the State treasurer under local law.

You have quoted the following underlined language from a statement by the court:

> By the words of [the provision of Florida law authorizing a trust company '[t]o receive deposits of trust moneys . . . ', the proceeds collected by the bank] might be *received by the trust department as a trust deposit, not subject to check as a commercial deposit, but for safekeeping until disposed of*. As such, by the requirements of [state and federal statutes], it ought to have been kept separate from the bank's commercial assets and not used by the bank unless substituted by a special deposit of approved bonds.
> (68 F.2d at 798 (emphasis supplied))

You assert that the underlined language means that the statutes prohibited deposits being received by the trust department where such deposits were subject to be drawn upon by the general depositors of the bank. You state that the statutes did not prohibit a beneficiary's writing checks against cash balances to which they are entitled.

We do not find this argument convincing for two reasons. First, other language in the case indicates that the court had in mind the commonly understood meaning of "subject to check." For instance, earlier the court had observed that the complainants

> did not draw drafts payable to their order with the proceeds subject to their direct control. . . . [They] could not get or divide it, for the power of distribution and the possession and title had been vested in the bank as a trust.
> (*Id.* at 797)

The court later pointed out that "the complainants made no deposit . . . subject to their check." *Id.* at 798. These other observations show that the court meant a deposit subject to withdrawal on demand by the beneficiaries drafting against the account.

Secondly, the language of the court is unclear because it seems to be "blending" the meaning of the two sentences in 12 U.S.C. § 92a(d). In order to be consistent with other language in the case and the issues being decided, the quoted language must be read to say two things: (1) that a deposit subject to check is a commercial banking transaction, and (2) that deposits received by the trust department are to be kept separate from deposits otherwise available for use by the bank.

It does not appear that the court in *Carcaba* had in mind a meaning of "deposits . . . subject to check" contrary to that which is commonly understood. As further support for this conclusion, we refer you to the case of *Richman* v. *First Methodist Episcopal Church of Collingswood*, 76 F.2d 344, 346 (3rd Cir. 1935) *cert. denied*, 296 U.S. 593 (1935), where the court indirectly interpreted "subject to check" as "withdrawal by check in the ordinary sense of that term."

Consistent with the few general comments in the House Report on the proper execution of fiduciary duties by a national bank, the language in the statute requires separation of the commercial and trust functions. The first sentence of section 92a(d) prohibits a trust department of a national bank from effecting transactions that are traditionally commercial banking activities. The second sentence provides that when a trust department holds funds awaiting investment, the funds shall be carried in a separate account and must not be used in the banking business unless there is first a pledge of securities by the bank.

We do not believe that reading each sentence of this section as addressing two different but related subjects creates an anomalous result. Each sentence addresses a restriction on the integration of trust and commercial banking business. Both assure the separateness of the two departments. It would be contrary to basic rules of statutory interpretation to say that the first sentence means the same thing as the second sentence. Such an interpretation would render part of the statute redundant, and would give the words "subject to check" a meaning contrary to that which is commonly understood.

As an alternative theory to support the permissibility of your proposal, you rely again on the *Carcaba* case to draw a distinction among the types of "deposits" which are prohibited by 12 U.S.C. § 92a(d). The court in this regard stated as follows:

> The deposits which are prohibited are not those made by the trust department in the exercise of its functions, but those made with the trust department by the bank's customers. The purpose [of the statute] is to prevent such customers in their ordinary commercial transactions from obtaining a preferential security over other commercial customers contrary to the general policy of the National Bank Act. See *Texas & Pacific R.R. Co.* v. *Pottorff* (C.C.A.) 63 F.2d 1.
> (68 F.2d at 798)

Based on this language, you believe that a distinction should be made between a customer who deposits funds in the trust department in order to acquire a secured checking account (a "trustor-depositor")

and one who writes checks against a trust cash account which represents funds that originate from a source other than the "trustor-depositor" but to which this person is beneficially entitled. You contend that the former, but not the latter, is prohibited.

Again, I must disagree with this conclusion. We do not consider the statement by the *Carcaba* case to be the only possible purpose behind the statutory prohibition at issue. The exact manner in which the court relied on *Texas & P. Ry.* v. *Pottorff*, 63 F.2d 1 (5th Cir. 1933), *aff'd* 291 U.S. 245 (1934), is not clear. That case dealt with the question of whether a national bank had the power to secure private deposits by a pledge of its assets absent specific statutory authority. Although the *Carcaba* court's reference to *Texas & P. Ry.* may be a correct statement of the policy underlying the prohibition against securing private deposits, it does not follow that this same reasoning is the sole purpose for the prohibition in section 92a(d). We believe that this provision, as well as other provisions of 12 U.S.C. § 92a, imposes certain restrictions on the trust activities of national banks and assures that the trust and commercial functions of the bank are kept separate and distinguishable.

Your proposal allows a person to write checks against a trust account through a zero-balance demand deposit account used as a clearing account for other persons' checks as well. Such activity is inconsistent with the separation of the trust and commercial activities of the bank required by 12 U.S.C. § 92a(d).

Competitive Equality

As indicated earlier, 12 U.S.C. § 92a(a) and (b) indicate a general policy of competitive equality between national and state banks. Section (a) of the statute provides that a national bank may be permitted by the Comptroller to act in any fiduciary *capacity* in which a state institution is allowed to act. The statute does not, however, provide that every procedure incident to the exercise of these powers shall be permitted to a national bank if such is permitted to the state institution. Indeed, Congress saw fit to specifically address certain aspects of the exercise of this power by national banks, as is evident from the other sections of the statute. Admittedly, it does not appear that the *** Banking Code contains any express limitation on the drawing of checks against cash balances in trust accounts. However, even assuming that *** law authorized state banks to offer such a service, Section 92a(d) would prohibit a national bank from offering the same service.

Current Trust Practices

You have stated two current trust department practices to support your argument that trust beneficiaries should be permitted to write checks on their cash balances. First, you point out that a trustee is able to write checks disbursing distributable income and that a logical step is to allow an additional means of access to the cash balances by granting check-writing privileges to the beneficiary. Secondly, you called our attention to the eligibility of trust and other fiduciary accounts to hold NOW accounts.

Although a trustee is able to write checks on trust accounts in administering a trust, this authority is not persuasive on the question of whether a beneficiary can do the same.[1] Section 92a(d) was not intended to interfere with the functions which a trustee must of necessity perform in carrying out its responsibility. *See Carcaba*, 68 F.2d at 798. However, to allow a beneficiary control over trust assets in a NOW account by allowing the account to be drawn upon by check by the beneficiary is not only inconsistent with the fact that these funds are trust assets, but is also prohibited by 12 U.S.C. § 92a(d).

In regard to the ability of a trust or fiduciary account to qualify for a NOW account, I do not believe that the Federal Reserve Board Release at [1979-80 Transfer Binder] *Federal Banking Law Reporter* (Commerce Clearing House), § 98,451 (November 7, 1980) contemplates that the beneficiary of a trust account which qualifies may withdraw the funds by check. Rather, it reaches those situations wherein the NOW account is in the name of the trust or the trustee, who may draw on the account although the beneficial interest in the account rests with an individual or qualifying organization. In a situation where the trustee deposited funds in a NOW account in the name of the beneficiary, the beneficiary having at all times the ability to withdraw funds by negotiable order of withdrawal, there would be no need to have a specific provision authorizing trust or other fiduciary accounts.

Conclusion

In conclusion, I must disagree with your interpretation of 12 U.S.C. § 92a(d) which would allow the program as proposed. However, I believe that with certain modifications the program could be implemented without violating 12 U.S.C. § 92a(d) for trust accounts established strictly for fiduciary purposes.[2] First of all, the Bank may sweep each day the cash balances in the trust accounts *awaiting distribution*[3] and invest those monies in non-affiliated money market funds *where* such investment is appropriate and legal under the in-

[1] A trustee has legal title and possession of the funds in the trust account. The beneficiary has neither. The proposed program would allow a beneficiary to draw a check on funds to which he does not have legal title, a questionable practice even if section 92a(d) did not prohibit such activity.

[2] This opinion applies only to trust accounts established strictly for fiduciary purposes. It does not apply to an account where the customer deposits funds in the trust department in order to obtain a secured checking account. This latter type of account created by a so-called trustor-depositor is not within the purview of this opinion. This opinion is based on your assurances that this service will not compete with or be used as a replacement for regular checking accounts. The service must not be marketed like checking accounts and may be offered only to those trust accounts established strictly for fiduciary purposes in accordance with the fiduciary standards embodied in local law and the Comptroller's regulation 9 (12 C.F.R. 9) and safe and sound banking practice.

[3] There is not need to speak to the question of the bank investing "cash awaiting investment" in the non affiliate money market funds since such action would constitute "investment" and is allowable where such "investment" is appropriate and legal under the instrument and applicable law.

struments and applicable law. The investing of cash balances awaiting distribution in non-affiliate money market funds, in our opinion, is an action by the *trustee* until the time that an affirmative obligation arises for the bank to distribute the income. After that point in time, any continued investing would be by the bank as an *agent*, and an appropriate agency agreement between the bank and the beneficiary would be required. Of course internal records of the bank would have to show the interest of each individual beneficiary in the fund.

I believe the program would not run afoul of 12 U.S.C. § 92a(d) if a separate checking account were set up for each beneficiary. The beneficiary would have legal title to any funds deposited in his individual checking account. Any checks he wrote would not be against funds deposited in the trust department. The beneficiary could call to determine the amount of funds available for distribution and could draft on his individual account up to that amount. I see no problem with the beneficiary's individual checking account being a zero-balance account. The trustee could then leave the funds invested until the check written by the beneficiary is presented for payment. At time of presentation for payment the bank could cash out the investment, deposit the monies in the beneficiaries account and pay the check.

I emphasize that the amount of any check written by the beneficiary, and paid by the Bank, may not exceed the amount of income then distributable to the beneficiary. A problem arises if the check written by the beneficiary exceeds the amount of income then available for distribution. To pay the check out of principal would be allowing the beneficiary to write checks against funds to which he has neither legal title nor possession and would violate 12 U.S.C. § 92a(d). Therefore, any checks written by the beneficiary in an amount that exceeds the amount of income then available for distribution should be returned. In the alternative, the excess amount of the check may be funded through an overdraft loan agreement with the beneficiary. It is emphasized that the overdraft loan agreement must be drafted so the Bank will not be forced to dispose of trust principal, or income not available for distribution, in order to repay the loan created by the overdraft. Otherwise, the trust department of the Bank could be put in the position of having to dispose of trust assets at a time that is other than optimum for the trust in order to repay a loan (overdraft) made by the commercial side of the Bank. The potential conflict of interest in such a situation is obvious.

If the Bank modifies the proposal as I have suggested above, I believe the program would not violate 12 U.S.C. § 92a(d).

The activity approved herein is a new one for national banks. We will monitor it as it is put into practice. Information gained from such monitoring may require alteration of the opinions expressed above.

[1] Depending on how the plan is finally implemented, certain Glass-Steagall Act issues may arise. The Bank should have on file for review by this Office an opinion of counsel that the service as finally implemented does not violate the Glass-Steagall Act. See *I.C.I. v. Camp*, 401 U.S. 617 (1971).

I trust this has been responsive to your inquiry.

Dean E. Miller
Deputy Comptroller for
Specialized Examinations

* * *

225—October 26, 1981

This letter is in response to your letter of October 15, 1981, requesting approval of adjustable-rate mortgage (ARM) forms developed and sold by ***.

To facilitate the formulation of ARM loan documents by national banks, the appendix to the ARM regulation (12 CFR Part 29) provides *model* disclosure forms, the use of which, when amended to describe permissible variations in the bank's particular ARM program, constitute compliance with the disclosure requirements of the regulation. Copies of our regulation and appendix are enclosed.

The documents that you submitted appear to resemble closely that model. This Office, however, does not generally review specific ARM documents, and the ARM forms enclosed in your letter have not been reviewed or approved by this Office. National banks are individually responsible for determining whether the documents they use comply with the Office's adjustable-rate mortgage regulation.

If you have any questions regarding the contents of this letter, please feel free to call Francis S. Rath, Legal Advisory Services Division, (202) 447-1880 at this Office.

Charles E. Lord
First Deputy Comptroller of the Currency

* * *

226—November 10, 1981

This is in response to your letter of October 23, 1981, to Mr. Andrew J. Levinson concerning this Office's adjustable-rate mortgage regulation. In particular, you request clarification of the application of the adjustable-rate mortgage (ARM) regulation to a mortgage loan which contains the following features:

1. A lump sum prepaid interest (buydown) amount which would help subsidize the interest payments on the loan for anywhere from one to five years.
2. The loan would have a fixed interest rate and it had a 30-year payment term.
3. The loan would have a demand feature for total repayment of the loan which could be exercised at the end of 7 years. This demand feature could only be exercised within a 30-day period at the end of the first 7 years. If this demand option was

not exercised in this time period, then the loan would continue for the full 30-year period.

The ARM regulation defines an adjustable-rate loan as

> any loan made to finance or refinance a purchase of and secured by a lien on a one-to-four family dwelling . . . where such a loan is made pursuant to an agreement intended to enable the lender to adjust the rate of interest from time to time. . . . They also include fixed-rate loan agreements that implicitly permit rate adjustment by having a note mature on demand . . . unless the national bank has clearly made no promise to refinance the loan (when demand is made . . .), and has made the disclosure specified in § 29.8(c).
> (12 CFR § 29.2 (1981))

Based on this definition, the above outlined loan would be considered a fixed-rate mortgage loan but for the demand provision at the end of the first seven years. This demand provision brings the loan within the definition of an ARM. However, if the bank makes no promise to refinance the loan when demand is made and provides the disclosures specified in Section 29.8(c) of the regulation, the loan would not be considered an ARM subject to the regulation. If a demand is made under the option after seven years, the bank may still refinance the loan if it makes a determination at *that time* to do so. However, the bank must clearly make no promise to refinance and it must give the required 29.8(c) disclosure in order for the loan not to be considered an adjustable-rate mortgage.

I hope this has been responsive to your inquiry. If you have any additional questions, please feel free to call Mr. Francis S. Rath, Attorney, Legal Advisory Services Division at (202) 447-1880

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

227—October 29, 1981

This is in response to your letter of October 13, 1981, to the Comptroller of the Currency regarding this Office's validation of due-on-sale clauses

In your letter, you state that it is your understanding that the proposed regulation, published at 46 *Federal Register* 46,964 (1981), and to be codified, if adopted, at 12 C.F.R. § 30, would nullify the assumption of current mortgages This is not the case

The proposed regulation would merely validate the *inclusion* of due-on-sale clauses in future real estate loans made by national banks and make such clauses fully enforceable It would not mandate the inclusion of such a clause. The summary of the regulation states that it would also

> *revalidate* due-on-sale clauses in loans made prior to the rendering of any state court decision or passage of any state statute impairing the enforceability of such clauses, unless the property subject to the mortgage lien containing such a clause was transferred prior to the final promulgation of this regulation
> (46 *Federal Register* 46964 (1981) (emphasis added))

Therefore, the regulation would only apply to loans made either before the date that a court or legislature impaired the enforceability of due-on-sale clauses or after the final promulgation of this regulation. The regulation would not apply to any loans made or assumed prior to the final promulgation *and* during the time such clauses were unenforceable or otherwise impaired due to state court or legislative decision.

The regulation, therefore, does in no way alter a contract made between an individual homeowner and a national bank. It merely permits a national bank to enforce the specific terms of such a contract. Since the regulation does not apply to any loan not containing a due-on-sale clause, it would be inapplicable to VA or FHA loans, as it is my understanding that such loans do not, in general, contain due-on-sale clauses.

Finally, it should be noted that this regulation only applies to national banks. However, the Federal Home Loan Bank Board has issued a rule covering all real estate loans by federal savings and loan institutions at 12 CFR 545.6-11(f).

I hope this has been responsive to your inquiry.

Francis S. Rath
Attorney
Legal Advisory Services Division

* * *

228—November 13, 1981

This is in response to your letter of October 20, 1981, to Mr. Jonathan L. Fiechter, Deputy Director, Banking Research and Economic Analysis Division concerning your variable-rate mortgage program In your letter, you state that in early June 1981, prior to the receipt of a letter from Mr. Lord concerning required modifications to your payment-capped mortgage program. The *** National Bank (***) sold a number of forward commitments to various realtors and builder customers. These commitments were signed on or before June 16, 1981, and specified a term to December 31, 1981. You have requested a ruling from this Office whether *** may continue to originate loans under these commitments using the original program loan documents.

*** had an existing payment-capped, adjustable rate program in effect prior to the effective date of this Office's adjustable-rate mortgage ("ARM") regulation. The commitments were made pursuant to this program prior to the receipt of Mr. Lord's letter of June 25, 1981, requiring modifications to the program. Pursuant

to Section 29.9(c) of the ARM regulation, a national bank that had already made a loan or binding commitment to lend under a payment-capped mortgage program as of the effective date of the regulation, could continue to make loans under such a program. The bank was required to submit the loan documents to the Office of the Comptroller of the Currency and the Office reserved the right to require any modifications or termination of the program. Since your program was submitted as an existing program and you did not receive our response containing required modifications until June 25, 1981, we are not requiring that the bank discontinue originating loans made under a legally binding commitment to lend entered into on or before June 16, 1981.

Since this Office views the modifications required as significant, we do require that *** lend under the revised program if doing so would not violate the terms of the commitment. The commitment, in Paragraph 16, is specifically subject to any required changes to the program and therefore seems to permit *** to institute these changes.

In order to conform the interest rate under the commitments to the modified program, *** could, if the index-derived rate is greater than the interest rate under the commitments, lend at the index-derived rate, as required by our letter, and simply rebate any differential from the committed rate.

Your original plan also contained a floor below which payments would not drop. Mr. Lord's letter of June 25, 1981, required removal of this floor. If a payment floor was also contained in your commitments, the removal of the payment floor as well as the additional disclosures required by the June letter would merely enhance the borrowers' rights. These changes would most likely be permitted under Paragraph 16 of the commitment. However, it should be noted that it is the bank's responsibility to determine whether a revision would violate the terms of the commitment.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

229—November 25, 1981

This responds to your letter dated October 15, 1981, addressed to Andrew J. Levinson, Senior Attorney, Legal Advisory Services Division. You refer to the manner in which a national bank may determine the base index value under this Office's adjustable-rate mortgage (ARM) regulation, 46 *Federal Register* 18932 (1981) (to be codified in 12 CFR Part 29). Under Section 29.4 of the regulation, a bank must use as a base index rate either the "most recently available value on the date of loan origination" or "the average of index values over an interval [equal to the interval between rate changes] ending with the date of loan origination." For example, the value of the index as of the date of loan application may not be used unless the index remains unchanged from the date of application until the date of loan origination or closing.

According to your letter, in California, real estate loans are secured by deeds of trust rather than mortgages, and title companies represent both parties at closing. Traditionally, the bank fills out and dates the loan note—which now includes the Section 29.4 base index value—a few days prior to closing and then immediately delivers it to a title company for use at closing. At this time, the bank releases the proceeds of the mortgage loan to the title company. You seek our confirmation that the ARM regulation permits *** ("Bank") to treat the date appearing on the loan note as the date of loan origination.

The Bank's use of the index value in effect when it puts into escrow all documents needed for loan closing does not violate the requirement of Section 29.4 that the base index used reflect the index value as of the date of "loan origination." In my view, the Bank can legitimately claim that it is originating the loan on the date it releases funds for the borrower, subject only to the completion of the escrow.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

230—December 4, 1981

This is in response to your letter of July 22, 1981, in which you ask whether an adjustable-rate mortgage loan made prior to March 27, 1981, is assumable after that date without compliance with the provisions of 12 C.F.R. § 29.

The adjustable-rate mortgage ("ARM") regulation (12 C.F.R. § 29) was effective on March 27, 1981. In our view, the regulation would generally not prohibit assumption of an ARM or require that such a loan be assumable after March 27, 1981, if the assumption was, respectively, permissible or impermissible under a contract entered into prior to that date.

However, if a national bank were to require a new borrower to accept significant modifications in a preexisting contract as a condition of approving the assumption, the ARM regulation could be applicable to the transaction. For example, if a contract permitted only payment changes and not changes in the rate of amortization of the loan as a method of reflecting rate changes, an attempt to change the rate of amortization on the loan could be viewed as a refinancing or, in effect, a new loan, subject to the requirements of 12 C.F.R. § 29. Similarly, if the preexisting contract authorized interest rate changes at 1-year intervals and limited such changes to 200 basis points over the period, an effort to change the terms of the loan to permit adjustments to the rate at intervals of less than a year, or by an amount greater than 200 basis points, could be

characterized as the making of a new loan subject to the provisions of 12 C.F.R. § 29.

The examples provided above are for illustrative purposes only and are, in no sense, to be viewed as an all-inclusive list of modifications that would be viewed as creating a new loan. However, since your inquiry is of a general nature, they may be of some assistance to you in dealing with particular bank transactions.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

231—December 8, 1981

This is in reference to your letter of September 16, 1981, and recent conversation with Mr. Larry A. Mellinger of our staff, regarding the applicability of the adjustable-rate mortgage ("ARM") regulation (12 C.F.R. § 29) to reverse annuity mortgages ("RAMs").

You indicate that a RAM is typically written where residential property is: (1) owned "free and clear," (2) has an existing encumbrance *not* resulting from a purchase money obligation, such as a home improvement loan or (3) has an existing encumbrance resulting from a purchase-money encumbrance.

The adjustable-rate mortgage is defined in 12 C.F.R. § 29.2 as

> any loan made to finance or refinance the purchase of and secured by a lien on a one- to four-family dwelling, including a condominium unit, cooperative housing unit, or mobile home, where such loan is made pursuant to an agreement intended to enable the lender to adjust the rate of interest from time to time.

You ask in which of the above situations, if any, a variable rate RAM loan would be viewed as the financing or refinancing of property subject to 12 C.F.R. § 29. You also ask whether a variable-rate RAM loan not subject to 12 C.F.R. § 29 would be considered a nonconforming loan under the provisions of 12 U.S.C. § 371(f).

We have the following comments regarding your inquiry. First, we would not consider a variable-rate RAM loan to a person who owns property "free and clear" or property having an encumbrance *not* resulting from a purchase-money obligation such as a home improvement loan, to be an ARM subject to the provisions of 12 C.F.R. § 29. However, if the property has an existing encumbrance arising from a purchase-money obligation, the applicability of the ARM regulation would depend on whether the RAM was used to pay off or effectively alter the terms of the loan resulting in the encumbrance.

Mr. Mellinger informs me that during your conversation with him you posed two situations in which an existing encumbrance resulting from a purchase-money loan could be serviced by a RAM loan. You requested that we indicate whether, in each case, the RAM loan would be subject to 12 C.F.R. § 29. Under the first example, a $20,000 encumbrance remains to be satisfied on an existing purchase-money loan. A RAM loan is made which satisfies the existing loan, as well as providing an additional $80,000 of payments to a homeowner on the basis of the homeowner's equity. The variable-rate feature would arise from a 3-year rollover arrangement.

The second case apparently involves a variation on the conventional wraparound mortgage. Under the typical wraparound, the owner obtains the benefits of additional financing without the prior mortgage being extinguished. A second lender takes over servicing the prior mortgage out of the payments he receives from the owner as debt service on the second loan, which is represented by a note covering the amount of both lenders' loans. Under the variation you describe, the homeowner, instead of making a payment to the wrap lender, would actually receive payments from the same lender based on the equity in his or her home. This portion of the transaction would be viewed as a RAM loan. In addition to providing the funds under the RAM loan directly to the homeowner, the wrap lender would service the underlying mortgage. As I understand the facts, you contemplate a 10-year note with two successive 3-year rollover periods and no change in rate for years 6 through 10.

In our opinion, both hypothetical variable-rate RAM loans would be subject to the provisions of 12 C.F.R. § 29. In the first example, payment of the existing encumbrance with new loan proceeds is a refinancing as the term is used in 12 C.F.R. § 29. We also would consider the variation on the conventional wraparound loan to be an ARM subject to our regulation. In our opinion, a wraparound mortgage made on a variable-rate basis is, in effect, a "refinancing" subject to the general requirements of 12 C.F.R. § 29.

Your second question is whether a variable-rate RAM loan, *not* subject to 12 C.F.R. § 29, is a nonconforming loan for purposes of 12 U.S.C. § 371(f). The answer to your question depends on what is meant by a nonconforming loan. Under the provisions of 12 U.S.C. § 371(f) and 12 C.F.R. § 7.2700, a nonconforming loan is generally one which does not comply with the limitations and restrictions of the subject statute. For example, under the provisions of Subsection (a)(1) of 12 U.S.C. § 371, a national bank may make loans upon real estate improved by a building or buildings in an amount not to exceed 90% of the appraised value. Such loans must require installment payments sufficient to amortize the loans over a period not in excess of 30 years if the loan-to-value ratio exceeds 75% or if the liened property is a one- to four-family dwelling. A loan on a one- to four-family dwelling which does not comply with this loan-to-value ratio or with the amortization requirement would be nonconforming under 12 U.S.C. § 371(f).

Such nonconforming loans may not exceed 10% of the amount that a national bank may invest in real estate loans, which is the greater of 100% of the bank's unimpaired capital and surplus or 100% of its time and

savings deposits (12 U.S.C. § 371(a)(3)). The 10% limit on nonconforming loans must be calculated as part of the total limitation on real estate loans. The fact that a variable-rate RAM loan is not subject to the provisions of 12 C.F.R. § 29 would not necessarily make it "nonconforming" for purposes of 12 C.F.R. § 29. However, it is our understanding that the RAM loans typically involve payout periods of 10 years, during which no amortization of the growing debt takes place. Such an arrangement would be inconsistent with the statutory amortization requirement, and the loans would therefore have to be treated as nonconforming under 12 U.S.C. § 371(f). Further, if the RAM loans are subject to the provisions of 12 C.F.R. § 29, the nonconforming allowance of 12 U.S.C. § 371(f) is not available to grant exceptions from compliance with the ARM regulation (*See* 12 C.F.R. § 29.3.)

I trust this is responsive to your inquiry. If you have additional questions, please do not hesitate to contact us.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

232—November 19, 1981

This is in response to your letters of May 7 and June 23, 1981, to Mr. Richard V. Fitzgerald, Director, Legal Advisory Services Division. Those letters regarded the issuance by the *** ("Bank") of standby letters of credit for the benefit of purchasers of Economic Development Corporation Bonds ("EDBs"). As noted by Mr. Fitzgerald in a July 10, 1981, initial response to you, your letters raised complex issues of law and policy which were at that time under study by this Office. The need for thorough study of those issues occasioned the unfortunate delay in this response.

In your May 7, 1981, letter you stated that in the past the Bank had purchased EDBs for its own account. Those bonds are not general obligations of the issuer, but rather are repayable from revenues of the project for which the bonds were issued. You further stated that the Seventh National Bank Region's staff has informed you that the EDBs are to be considered obligations under 12 U.S.C. § 84. Presumably, the regional staff found that each bond is considered the equivalent of a loan to the individual or company responsible for payment (usually an industrial lessee). Such bonds are usually not considered to be investment securities eligible for bank purchase due to failure to meet the marketability requirements of 12 C.F.R. § 1.5. Given these facts, this letter presumes that the subject EDBs are comparable to loans and are not investment securities.

Due to tax considerations, the Bank does not wish to purchase EDBs for its own account at this time. However, it wishes to help provide EDB financing for its customers. The above situation has prompted the Bank's consideration of two alternate methods of placing EDBs in the hands of investors (financial institutions or sophisticated individuals). Under the first method, the Bank would purchase an EDB and immediately resell it to an investor. Under the second method, the investor would purchase the EDB directly. Under both methods, the Bank would issue a standby letter of credit in the amount of the outstanding balance due on the EDB. Payment under the standby letter of credit would be made upon default on the EDB. If default triggered foreclosure of a mortgage securing the EDB, the investor would assign the mortgage to the Bank when the bond balance under the standby letter of credit was drawn.

In your May 7 letter, you asked whether the Section 82 limits on a bank's liabilities are applicable to a bank's liability on the letter of credit that would be issued under either plan then being considered. In so doing, you presented your analysis of the applicability of Section 82 to those liabilities.

You concluded that Section 82 would be applicable where the Bank buys the EDB and issues a standby letter of credit in conjunction with an immediate resale. You noted that this Office recently issued an interpretive letter which found Section 82 applicable to bank's liability under a standby letter of credit issued to facilitate the sale of interests in pools of the bank's mortgage loans. *Federal Banking Law Reporter*, Commerce Clearing House, ¶85.213. That February 1, 1980, letter addressed the bank's obligation under the standby letter of credit to make advances where arrearages or defaults occurred with respect to mortgages in the pool. The letter found that obligation to be in the nature of a repurchase agreement and therefore subject to Section 82 under I.R. 7.7519, 12 CFR 7.7519. Although you found this precedent for applying Section 82 to the obligation under the standby letter of credit issued in the sale and immediate resale situation, you did not find it applicable to the situation where the investor would directly purchase an EDB supported by the Bank's standby letter of credit. You felt that, because the Bank would not sell the EDB in this situation, its obligation under the standby letter of credit could not be characterized as a repurchase agreement.

In a November 10, 1981, conversation with attorney Alan Priest of our Law Department, you indicated that the individual or company which is responsible for repayment of the EDB would be the account party on the proposed letter of credit. That party would pay the Bank a fee for issuance and would execute documents creating an unqualified obligation to reimburse the Bank for any payments made under the letter of credit. The Bank would observe all the guidelines established by I.R. 7.1160, 12 C.F.R. § 7.1160. You also stated that the Bank is no longer considering the above described transaction whereby the Bank would purchase and then immediately sell EDBs. This being the case, I will comment only on the transaction where the investor will buy an EDB from a seller other than the Bank and the EDB will be backed by a letter of credit issued by the Bank with the obligor on the EDB as account party.

I agree with you that the Bank's obligation to the in-

vestor under the above described standby letter of credit would not be subject to 12 U.S.C. § 82. As indicated in the previously described February 1 letter, as a general rule, the issuance of a letter of credit does not create an obligation subject to Section 82. However, as the letter also noted, Section 82 does apply to a letter of credit which, in effect, functions as a repurchase agreement regarding loans sold out of a bank's portfolio. Since, under the proposed transaction, the Bank will not be selling or underwriting the EDBs, it is my opinion that the standby letter of credit would not be in the nature of a repurchase agreement and would not be subject to Section 82.

In answering your inquiry, I note that it is not *ultra vires* for the Bank to issue the described standby letter of credit. Given the facts as stated above, including the Bank's assurance of compliance with I.R. 7.1160, the subject standby letter of credit, in my opinion, is consistent with those which courts have recognized as permissible for national banks. *See, e.g., Prudential Insurance Co. of America v. Marquette National Bank of Minneapolis*, 419 F. Supp. 734 (D.C. Minn. 1976); *Republic National Bank of Dallas v. Northwest National Bank of Fort Worth*, 578 S.W.2d 109 (Tex. 1979). *See also Federal Banking Law Reporter*, Commerce Clearing House, ¶85,202, and references noted therein. Finally, I note that under I.R. 7.1160, 12 C.F.R. § 7.1160, the subject standby letter of credit "is subject to the limitations of [12 U.S.C. § 84] and must be combined with any other nonexempted loans to the account party" for the purposes of applying that Section.

Charles F. Byrd
Assistant Director
Legal Advisory Services Division

* * *

Statistical Tables

Domestic office deposits of national banks, by states, September 30, 1981
(Dollar amounts in millions)

	Demand deposits of individuals, partnerships and corporations	All other demand deposits	NOW and automatic transfer accounts	All other savings accounts	Money market certificates of deposit	Time certificates of deposit of $100,000 or more	Other time deposits of $100,000 or more	All other time deposits	Total domestic deposits
All national banks	$155,619	$49,653	$31,126	$85,126	$118,183	$162,871	$12,675	$55,097	$670,350
Alabama	1,973	424	338	1,044	2,035	1,305	457	1,058	8,635
Alaska	542	83	90	196	176	190	1	22	1,301
Arizona	1,972	276	308	1,404	2,227	1,132	10	636	7,965
Arkansas	1,095	343	336	544	1,262	728	49	560	4,917
California	21,238	3,984	4,512	14,023	13,131	36,304	1,890	4,432	99,514
Colorado	2,722	787	597	1,120	1,172	2,225	108	506	9,237
Connecticut	1,261	437	218	573	627	301	63	303	3,782
Delaware	20	1	2	23	24	5	0	16	91
District of Columbia	1,868	428	352	721	371	1,637	21	122	5,520
Florida	6,408	1,306	1,601	3,322	4,820	2,690	85	1,232	21,464
Georgia	2,804	1,050	424	769	1,516	1,158	45	891	8,657
Hawaii	32	4	10	24	27	47		3	147
Idaho	659	104	279	446	936	471	3	414	3,312
Illinois	10,307	3,271	1,472	5,106	6,970	17,311	1,683	4,142	50,261
Indiana	2,458	846	708	1,983	3,892	1,717	24	2,097	13,726
Iowa	986	363	378	711	1,488	536	21	1,008	5,491
Kansas	1,328	390	363	620	1,457	944	101	737	5,939
Kentucky	1,420	274	360	677	1,609	987	28	878	6,234
Louisiana	2,834	734	394	1,164	1,771	2,715	13	586	10,212
Maine	248	49	120	220	220	57	2	123	1,039
Maryland	1,553	320	195	1,309	1,064	603	6	515	5,565
Massachusetts	3,637	1,228	740	1,182	952	3,786	315	413	12,254
Michigan	4,289	1,293	788	4,237	5,514	4,053	53	2,056	22,283
Minnesota	2,965	1,052	640	1,688	2,332	3,726	65	1,854	14,322
Mississippi	974	328	183	347	1,148	855	2	678	4,516
Missouri	2,713	1,055	487	851	1,578	2,887	96	869	10,536
Montana	469	110	178	312	745	277	7	370	2,468
Nebraska	1,059	394	369	481	1,457	672	9	880	5,320
Nevada	673	73	131	357	427	318	2	80	2,061
New Hampshire	372	66	177	279	301	186	3	130	1,514
New Jersey	4,814	900	650	4,106	3,931	1,996	77	2,083	18,558
New Mexico	686	138	261	349	699	797	6	249	3,184
New York	17,962	15,236	1,989	6,732	9,899	16,394	3,461	3,643	75,316
North Carolina	3,131	493	865	1,699	2,416	1,680	105	1,065	11,454
North Dakota	349	55	165	224	582	191	5	395	1,966
Ohio	5,676	1,167	1,413	5,280	6,044	3,431	99	3,305	26,415
Oklahoma	3,138	889	522	924	2,364	4,724	15	822	13,398
Oregon	1,625	311	655	1,087	1,616	1,357	2	757	7,411
Pennsylvania	7,805	1,801	1,510	6,103	7,182	9,000	513	4,719	38,633
Rhode Island	640	121	145	452	633	1,021	27	381	3,421
South Carolina	1,268	188	342	480	604	277	1	343	3,504
South Dakota	403	58	218	278	883	1,753	8	633	4,233
Tennessee	1,979	640	510	1,098	2,426	1,326	27	1,003	9,008
Texas	15,955	4,694	2,712	3,538	8,284	21,493	2,870	2,770	62,316
Utah	582	97	177	348	557	747	4	182	2,694
Vermont	90	15	35	151	133	46	1	68	539
Virginia	2,114	306	589	1,594	2,546	876	48	1,594	9,668
Washington	3,526	640	929	2,106	2,716	4,041	49	1,229	15,236
West Virginia	902	187	200	1,059	1,392	412	12	780	4,943
Wisconsin	1,608	527	351	1,532	1,613	1,161	25	1,305	8,122
Wyoming	490	113	137	252	416	324	158	162	2,051
District of Columbia — all*	1,885	431	354	743	378	1,640	21	124	5,576

* Includes national and nonnational banks in the District of Columbia, all of which are supervised by the Comptroller of the Currency.
NOTE: Dashes indicate amounts of less than $500,000. Figures may not add to totals due to rounding.

Domestic offices loans of national banks, by states, September 30, 1981
(Dollar amounts in millions)

	Total loans, gross	*Loans secured by real estate*	*Loans to financial institutions*	*Loans to purchase or carry securities*	*Loans to farmers*	*Commercial and industrial loans*	*Personal loans to individuals*	*Other loans*	*Total loans less unearned income*
All national banks	$510,065	$157,336	$29,667	$6,042	$15,685	$185,278	$102,507	$13,551	$500,496
Alabama	5,328	1,617	132	29	105	1,665	1,650	131	5,081
Alaska	728	272	11		14	282	146	3	719
Arizona	6,229	1,983	454	3	423	1,476	1,758	131	6,042
Arkansas	3,218	1,016	201	47	145	1,105	631	73	3,146
California	87,344	38,282	4,336	569	3,004	26,013	13,854	1,285	87,008
Colorado	6,976	1,991	194	89	482	2,411	1,681	129	6,873
Connecticut	2,677	1,025	164	1	8	815	616	47	2,604
Delaware	60	39	0	0	—	6	14	—	58
District of Columbia	4,173	1,699	271	8	4	1,270	784	138	4,102
Florida	13,374	5,198	387	34	48	3,077	4,383	247	12,762
Georgia	6,203	1,482	245	20	45	2,061	2,183	166	5,924
Hawaii	91	39	0	0	1	25	26	—	90
Idaho	2,370	747	26	12	265	713	594	14	2,333
Illinois	46,580	10,189	4,358	964	1,041	22,362	5,499	2,168	46,054
Indiana	9,310	3,770	502	69	274	2,318	2,232	145	9,025
Iowa	3,613	1,037	79	76	742	921	697	61	3,588
Kansas	3,505	694	127	80	657	1,084	818	45	3,456
Kentucky	4,310	1,450	168	25	211	1,185	1,180	91	4,160
Louisiana	6,265	1,663	166	35	71	2,482	1,667	182	6,045
Maine	666	298	1	0	2	184	174	6	644
Maryland	4,270	1,795	136	30	32	1,159	1,062	55	4,186
Massachusetts	9,054	1,944	747	21	54	4,549	1,604	135	8,854
Michigan	15,542	6,143	1,000	36	131	4,919	2,782	530	15,381
Minnesota	11,111	2,927	507	363	691	4,307	1,738	578	10,959
Mississippi	2,990	1,040	83	49	78	826	827	87	2,878
Missouri	7,217	1,744	745	142	307	2,653	1,415	211	7,130
Montana	1,714	462	21	1	265	490	456	20	1,654
Nebraska	3,630	495	131	88	1,292	778	759	88	3,583
Nevada	1,430	672	22	0	16	317	397	5	1,373
New Hampshire	1,083	402	5	—	2	325	337	13	1,028
New Jersey	12,207	5,334	411	45	7	3,335	2,859	216	11,836
New Mexico	1,996	495	49	6	117	722	582	25	1,922
New York	61,422	13,115	5,389	1,313	342	28,371	10,158	2,733	60,450
North Carolina	8,786	1,893	348	41	119	3,478	2,725	181	8,536
North Dakota	1,257	326	8	1	271	408	229	13	1,244
Ohio	17,947	6,438	498	86	277	4,865	5,509	275	17,283
Oklahoma	8,864	2,128	291	232	606	3,647	1,541	418	8,708
Oregon	5,677	1,998	391	22	255	1,884	1,066	61	5,621
Pennsylvania	27,737	8,460	3,522	284	152	9,143	5,558	619	27,018
Rhode Island	2,680	980	135	3	1	1,082	426	53	2,623
South Carolina	2,200	501	20	4	44	648	942	41	2,097
South Dakota	3,996	440	18	3	564	498	2,452	22	3,965
Tennessee	5,985	1,790	313	73	80	1,934	1,622	172	5,765
Texas	46,435	9,850	2,016	941	1,436	23,635	7,249	1,309	45,571
Utah	2,079	923	39	12	42	563	467	33	2,050
Vermont	391	206	—	—	9	91	80	5	387
Virginia	7,021	2,960	115	27	111	1,536	2,108	164	6,685
Washington	11,644	3,201	549	63	492	4,645	2,465	228	11,598
West Virginia	3,031	1,286	88	8	13	560	1,032	42	2,848
Wisconsin	6,364	2,523	243	85	187	2,009	1,172	146	6,265
Wyoming	1,289	373	3	3	149	447	302	12	1,265
District of Columbia—all*	4,201	1,717	271	8	4	1,275	787	138	4,130

* Includes national and nonnational banks in the District of Columbia, all of which are supervised by the Comptroller of the Currency

NOTE Dashes indicate amounts of less than $500,000 Figures may not add to totals due to rounding

Outstanding balances, credit cards and related plans for national banks, September 30, 1981
(Dollar amounts in thousands)

	Total number of national banks	Credit cards and other related credit plans	
		Number of national banks	Outstanding volume
All national banks	4,466	1,839	$22,066,505
Alabama	99	20	156,283
Alaska	5	4	41,243
Arizona	3	2	396,862
Arkansas	70	12	51,332
California	54	42	4,059,619
Colorado	149	115	444,523
Connecticut	18	11	159,789
Delaware	6	1	13
District of Columbia	16	14	187,241
Florida	191	80	619,833
Georgia	63	28	487,732
Hawaii	2	1	3,194
Idaho	7	4	65,019
Illinois	406	160	1,554,569
Indiana	119	75	267,451
Iowa	99	44	172,676
Kansas	148	23	95,422
Kentucky	77	34	142,075
Louisiana	54	15	190,891
Maine	13	12	27,289
Maryland	26	9	318,074
Massachusetts	70	55	359,742
Michigan	126	65	680,019
Minnesota	203	124	143,085
Mississippi	37	5	63,241
Missouri	110	53	387,819
Montana	55	26	10,159
Nebraska	117	30	147,399
Nevada	3	2	51,494
New Hampshire	35	25	35,573
New Jersey	89	60	297,503
New Mexico	40	11	67,819
New York	113	58	3,376,112
North Carolina	24	21	458,768
North Dakota	39	17	8,900
Ohio	169	111	768,643
Oklahoma	188	39	149,606
Oregon	6	4	245,958
Pennsylvania	208	53	750,467
Rhode Island	5	4	69,228
South Carolina	18	12	129,353
South Dakota	34	9	2,101,556
Tennessee	68	13	214,676
Texas	681	152	808,715
Utah	10	3	65,721
Vermont	11	2	6,106
Virginia	70	26	331,864
Washington	19	10	536,865
West Virginia	112	21	51,193
Wisconsin	132	101	301,650
Wyoming	49	21	6,141
District of Columbia—all*	17	15	187,467

* Includes the nonnational bank in the District of Columbia, which is also supervised by the Comptroller of the Currency.

National banks engaged in lease financing, September 30, 1981
(Dollar amounts in thousands)

	Total number of national banks	Number of banks engaged in lease financing	Amount of lease financing at domestic offices
All national banks	4 466	856	$8,379,212
Alabama	99	17	35,774
Alaska	5	2	5,945
Arizona	3	1	91,845
Arkansas	70	14	16,952
California	54	16	3,155,560
Colorado	149	52	102,936
Connecticut	18	1	8,807
Delaware	6	0	0
District of Columbia	16	4	27,038
Florida	191	31	52,323
Georgia	63	14	94,957
Hawaii	2	1	5,656
Idaho	7	3	53,523
Illinois	406	75	250,418
Indiana	119	27	164,653
Iowa	99	23	10,671
Kansas	148	27	8,523
Kentucky	77	14	154,294
Louisiana	54	10	35,292
Maine	13	0	0
Maryland	26	6	72 744
Massachusetts	70	15	331,253
Michigan	126	23	232,393
Minnesota	203	37	241,410
Mississippi	37	7	8,319
Missouri	110	28	109,369
Montana	55	17	9,056
Nebraska	117	27	58,173
Nevada	3	2	18,083
New Hampshire	35	1	187
New Jersey	89	12	148,147
New Mexico	40	15	3,227
New York	113	14	643,893
North Carolina	24	6	210,785
North Dakota	39	10	4,662
Ohio	169	42	383,054
Oklahoma	188	78	33,337
Oregon	6	2	41,637
Pennsylvania	208	10	280,737
Rhode Island	5	3	144,164
South Carolina	18	2	10,421
South Dakota	34	5	1,277
Tennessee	68	10	53,110
Texas	681	72	257,898
Utah	10	3	76,733
Vermont	11	0	0
Virginia	70	4	45,976
Washington	19	8	618,261
West Virginia	112	17	8,835
Wisconsin	132	31	53,973
Wyoming	49	17	2,931
District of Columbia — all*	17	4	27,038

* Includes the nonnational bank in the District of Columbia, which is also supervised by the Comptroller of the Currency

Average banks' percent of loans past due, by national bank region, September 1980 to September 1981

	National bank region														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	United States
Real estate															
Sept 1980	3.7	4.4	4.3	3.2	3.7	2.6	3.6	4.1	3.1	3.5	2.9	4.7	4.1	3.8	3.5
Dec 1980	4.0	4.6	4.6	3.2	4.0	2.7	3.6	4.4	3.2	3.5	3.0	4.2	4.2	3.5	3.6
Mar 1981	4.2	4.7	4.8	3.3	4.0	3.1	4.0	4.3	3.5	3.9	3.2	4.2	4.5	3.3	3.8
June 1981	3.7	4.2	4.7	3.5	3.9	2.4	4.0	4.4	3.5	3.8	3.3	4.7	3.9	4.0	3.7
Sept 1981	3.8	4.3	4.7	3.8	4.0	2.8	4.4	4.7	3.8	4.6	3.1	4.8	4.2	4.6	4.0
Commercial and industrial															
Sept 1980	4.5	5.0	6.1	4.8	5.6	3.5	5.1	4.6	4.8	4.2	3.7	5.7	6.3	7.1	4.7
Dec 1980	5.0	4.8	5.8	4.1	5.3	3.9	5.2	4.2	4.8	3.7	3.7	5.0	5.6	4.8	4.5
Mar 1981	5.5	5.4	7.0	4.3	4.9	3.6	5.6	4.7	5.2	4.2	3.6	5.4	6.1	6.8	4.8
June 1981	5.0	5.3	5.9	4.5	5.7	3.8	5.7	4.4	5.6	4.1	3.8	6.1	6.1	8.5	4.9
Sept 1981	5.1	5.7	6.5	5.4	5.8	4.4	6.2	4.6	6.1	5.1	4.1	6.0	7.2	9.4	5.4
Personal															
Sept. 1980	3.6	3.8	4.0	3.8	3.9	2.3	3.7	4.4	3.8	4.0	3.7	3.8	3.9	3.0	3.7
Dec 1980	3.7	3.7	4.4	3.7	4.0	2.5	3.7	4.8	3.7	3.7	3.9	3.5	4.0	2.8	3.8
Mar 1981	3.7	3.6	4.0	3.4	3.7	2.1	3.6	4.4	3.7	3.8	3.3	3.3	3.6	3.0	3.5
June 1981	3.6	3.5	3.8	3.5	4.0	2.0	3.5	4.1	3.7	3.8	3.2	3.4	3.4	2.6	3.5
Sept 1981	3.4	3.6	3.8	3.5	3.8	2.4	3.6	4.2	3.7	4.0	3.3	3.3	3.6	3.2	3.5
All other															
Sept 1980	6.1	5.5	3.6	3.5	5.5	4.5	4.1	4.1	3.3	2.5	5.0	5.6	3.7	15.1	4.4
Dec 1980	6.3	4.8	4.0	3.8	4.2	4.0	3.7	4.8	3.1	3.1	4.4	7.1	5.0	7.5	4.3
Mar 1981	5.8	6.2	2.7	4.3	4.2	4.8	4.2	4.6	3.2	3.5	4.7	6.1	5.5	5.1	4.4
June 1981	5.7	5.2	3.5	4.7	3.2	5.2	3.4	3.8	3.0	3.8	5.1	5.6	5.2	10.3	4.4
Sept 1981	4.9	6.2	3.2	3.5	3.0	5.3	3.6	3.5	3.2	3.2	4.5	6.6	4.7	9.2	4.1
Total loans															
Sept 1980	3.9	4.3	4.4	3.6	4.0	2.6	3.8	4.0	3.3	3.0	3.1	4.2	4.3	4.3	3.6
Dec 1980	4.2	4.3	4.7	3.5	4.2	2.8	3.8	4.3	3.5	2.9	3.3	4.1	4.6	3.7	3.6
Mar 1981	4.5	4.4	4.7	3.5	4.1	2.7	4.1	4.2	3.7	3.2	3.1	4.1	4.7	4.1	3.7
June 1981	4.1	4.2	4.5	3.6	4.2	2.5	4.0	3.9	3.7	3.1	3.1	4.3	4.5	4.6	3.7
Sept 1981	4.0	4.3	4.6	3.9	4.2	2.8	4.3	4.1	4.0	3.4	3.3	4.4	4.9	5.4	3.9

NOTES Percentages reported are averages of individual banks' percentages of loans past due with each bank accorded the same weight regardless of size, those individual bank percentages are based on dollar value of loans past due All figures are as of the last day of the month indicated "All other" includes loans to financial institutions, loans for purchasing or carrying securities, loans to farmers and all other loans See technical notes on p 216 Effective September 1981, national banks located in the upper peninsula of Michigan are included in Region 9 and excluded from Region 7

Average banks' percent of loans past due, by deposits, September 1980 to September 1981

	Deposits in millions of dollars								
	Less than $5	*$5 to $10*	*$10 to $25*	*$25 to $50*	*$50 to $100*	*$100 to $500*	*$500 to $1,000*	*$1,000 or more*	*All national banks*
Real estate									
Sept 1980	4.1	3.7	3.7	3.5	3.2	3.2	4.2	4.4	3.5
Dec 1980	3.8	4.1	3.8	3.5	3.2	3.4	3.8	4.4	3.6
Mar 1981	3.1	4.3	3.8	3.8	3.6	3.5	4.4	5.1	3.8
June 1981	3.0	4.2	3.9	3.7	3.4	3.5	4.5	4.8	3.7
Sept 1981	3.0	5.0	4.1	3.9	3.7	3.7	4.8	5.3	4.0
Commercial and industrial									
Sept 1980	3.6	4.9	4.8	4.7	4.7	4.5	3.9	4.4	4.7
Dec 1980	2.9	4.6	4.7	4.6	4.5	4.2	3.8	4.1	4.5
Mar 1981	3.5	4.7	5.0	4.5	5.0	4.7	4.1	4.7	4.8
June 1981	3.6	4.9	4.9	4.8	5.1	4.7	4.3	4.8	4.9
Sept 1981	3.5	5.8	5.3	5.5	5.6	5.2	4.8	5.2	5.4
Personal									
Sept 1980	3.5	4.2	4.2	3.8	3.4	3.0	3.0	3.5	3.7
Dec 1980	3.1	4.4	4.2	3.9	3.4	3.1	3.1	3.4	3.8
Mar 1981	2.8	4.2	3.9	3.6	3.2	2.9	2.8	3.4	3.5
June 1981	3.0	4.4	3.7	3.7	3.1	2.7	2.6	3.4	3.5
Sept 1981	2.6	4.2	3.8	3.7	3.2	2.9	3.0	3.5	3.5
All other									
Sept 1980	3.5	4.9	4.2	4.1	5.1	4.4	3.5	4.1	4.4
Dec 1980	2.1	4.1	4.4	4.5	4.6	3.9	2.8	2.9	4.3
Mar 1981	2.3	4.1	4.3	4.6	5.1	4.4	3.4	4.1	4.4
June 1981	3.9	4.8	3.8	4.6	4.7	4.5	3.2	4.0	4.4
Sept 1981	2.2	4.4	3.9	4.4	3.9	4.5	4.0	4.2	4.1
Total loans									
Sept 1980	2.9	3.6	3.7	3.6	3.5	3.4	3.6	4.0	3.6
Dec 1980	2.6	3.9	3.8	3.7	3.5	3.4	3.4	3.9	3.6
Mar 1981	2.3	3.8	3.8	3.7	3.7	3.6	3.7	4.3	3.7
June 1981	2.5	4.0	3.6	3.7	3.6	3.5	3.7	4.3	3.7
Sept 1981	2.5	4.3	3.8	3.9	3.8	3.8	4.1	4.6	3.9

NOTES Percentages reported are averages of individual banks' percentages of loans past due with each bank accorded the same weight regardless of size, those individual bank percentages are based on dollar value of loans past due All figures are as of the last day of the month indicated "All other" includes loans to financial institutions, loans for purchasing or carrying securities loans to farmers and all other loans See technical notes on p 216

Average banks' percent of loans past due, by assets, September 1980 to September 1981

	Assets in millions of dollars									
	Less than $10	*$10 to $20*	*$20 to $25*	*$25 to $40*	*$40 to $100*	*$100 to $300*	*$300 to $900*	*$900 to $5,000*	*$5,000 or more*	*All national banks*
Real estate										
Sept 1980	4.0	3.7	3.7	3.5	3.3	3.2	3.5	4.5	4.7	3.5
Dec 1980	4.0	3.6	4.0	3.7	3.3	3.3	3.5	4.2	4.9	3.6
Mar 1981	4.2	3.8	3.8	3.9	3.6	3.5	3.9	4.9	5.4	3.8
June 1981	3.8	3.9	4.0	3.7	3.6	3.4	3.8	4.9	4.8	3.7
Sept 1981	4.5	4.2	3.9	4.0	3.7	3.6	4.3	5.1	5.7	4.0
Commercial and industrial										
Sept 1980	4.6	4.8	4.8	4.7	4.7	4.6	4.1	4.3	4.4	4.7
Dec 1980	4.3	4.5	4.6	4.7	4.4	4.3	4.1	3.9	4.2	4.5
Mar 1981	4.4	5.1	4.6	4.7	4.9	4.8	4.5	4.5	4.5	4.8
June 1981	4.8	5.0	4.6	4.9	5.0	4.7	4.5	4.7	4.1	4.9
Sept 1981	5.2	5.2	5.4	5.4	5.6	5.4	4.7	5.1	4.8	5.4
Personal										
Sept 1980	4.0	4.1	4.4	4.0	3.6	3.0	2.8	3.5	3.7	3.7
Dec 1980	4.2	4.3	3.8	4.2	3.6	3.1	2.9	3.4	3.6	3.8
Mar 1981	4.0	3.9	3.7	3.8	3.4	2.9	2.7	3.3	3.3	3.5
June 1981	4.1	3.8	2.6	3.7	3.4	2.8	2.5	3.2	3.0	3.5
Sept 1981	3.7	3.9	3.5	3.9	3.5	3.0	2.7	3.4	3.5	3.5
All other										
Sept 1980	3.9	4.8	3.5	4.2	4.6	4.7	3.6	4.2	4.3	4.4
Dec 1980	3.8	4.2	3.9	4.8	4.5	4.2	2.9	3.7	4.1	4.3
Mar 1981	3.9	3.5	4.4	5.1	4.7	4.8	3.7	4.2	4.0	4.4
June 1981	4.8	3.4	3.8	5.0	4.4	5.1	3.4	4.1	3.9	4.4
Sept 1981	4.3	3.3	3.7	5.0	4.0	4.5	4.0	3.9	4.6	4.1
Total loans										
Sept 1980	3.5	3.5	3.8	3.7	3.5	3.4	3.4	4.0	4.0	3.6
Dec 1980	3.6	3.6	3.8	3.9	3.6	3.4	3.4	3.8	3.9	3.6
Mar 1981	3.5	3.6	3.8	3.9	3.7	3.6	3.7	4.2	4.1	3.7
June 1981	3.7	3.6	3.6	3.8	3.7	3.5	3.6	4.2	3.8	3.7
Sept 1981	3.8	3.7	3.9	4.0	3.9	3.8	3.8	4.5	4.4	3.9

NOTES: Percentages reported are averages of individual banks' percentages of loans past due with each bank accorded the same weight regardless of size; those individual bank percentages are based on dollar value of loans past due. All figures are as of the last day of the month indicated. "All other" includes loans to financial institutions, loans for purchasing or carrying securities, loans to farmers and all other loans. See technical notes on p. 216

Average banks' percent of loans past due at foreign offices, September 1980 to September 1981

	Assets in millions of dollars			
	$300 to $900	*$900 to $5,000*	*$5,000 or more*	*All national banks*
Foreign office loans:				
Sept. 1980	0.7	1.2	1.2	1.1
Dec. 1980	1.1	1.4	0.9	1.3
Mar. 1981	1.8	1.0	0.9	1.1
June 1981	1.9	1.1	0.7	1.1
Sept. 1981	1.7	1.4	1.0	1.3

NOTES: Percentages reported are averages of individual banks' percentages of loans past due with each bank accorded the same weight regardless of size; those individual bank percentages are based on dollar value of loans past due. They represent averages of the total percent of foreign office loans past due for every national bank which had foreign office loans outstanding on the report date. All figures are as of the last day of the month indicated.

TECHNICAL NOTES:

Past Due Loan Data—Beginning November 1974, all national banks were requested to submit bimonthly reports listing their total loans outstanding and amount past due as of the end of the month. Beginning with September 1975, the reports have been collected quarterly to coincide with call report dates. The primary purpose of the data is to assist the Office in monitoring the performance of individual banks. However, the Office periodically provides aggregate or average figures for public use.

Past Due Loan Criteria—Banks are directed to use the same criteria used by national bank examiners as this report is a supplement to the regular examination report. That is, loans past due are: (1) beginning with December 1977, single payment notes 15 days or more past maturity—prior to that, six days or more past maturity; (2) single payment notes with interest due at specified intervals and demand notes on which interest is due and unpaid for 15 days or more; and (3) consumer, mortgage or term loans payable in regular installments on which one installment is due and unpaid for 30 days or more.

Loan Categories—The loan categories for this report correspond to those used for the report of condition except for "Other Loans." "Other Loans" includes loans to financial institutions, loans for purchasing or carrying securities, loans to farmers and all other loans not included in the specified categories.

National Bank Regions—Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont; Region 2: New Jersey, New York, Puerto Rico and Virgin Islands; Region 3: Delaware and Pennsylvania; Region 4: Indiana, Kentucky, and Ohio; Region 5: District of Columbia, Maryland, North Carolina, Virginia and West Virginia; Region 6: Florida, Georgia and South Carolina; Region 7: Illinois and Michigan (exludes banks in the upper peninsula); Region 8: Alabama, Arkansas, Louisiana, Mississippi and Tennessee; Region 9: Michigan (banks in the upper peninsula only), Minnesota, North Dakota, South Dakota and Wisconsin; Region 10: Iowa, Kansas, Missouri and Nebraska; Region 11: Oklahoma and Texas; Region 12: Arizona, Colorado, New Mexico, Utah and Wyoming; Region 13: Alaska, Idaho, Montana, Oregon and Washington; Region 14: California, Hawaii and Nevada.

Consolidated assets and liabilities of national banks with foreign operations, September 30, 1981

(Dollar amounts in millions)

	Foreign and domestic offices*	*Domestic offices*
Cash and due from depository institutions	$166 740	$ 71 427
U S Treasury securities	20 013	19 896
Obligations of other U S government agencies and corporations	11 318	11 268
Obligations of states and political subdivisions in the United States	38 674	38 017
Other bonds, notes and debentures	5 036	729
Federal Reserve stock and corporate stock	1 006	845
Trading account securities	7 710	6 779
Federal funds sold and securities purchased under agreements to resell	23 232	22 896
Loans, total (excluding unearned income)	460 024	318 067
Less Allowance for possible loan losses	4.609	4 408
Loans, net	455 414	313,658
Lease financing receivables	8 963	7 238
Bank premises, furniture and fixtures, and other assets representing bank premises	9 857	8 659
Real estate owned other than bank premises	847	743
Investments in unconsolidated subsidiaries and associated companies	1 123	296
Customers' liability on acceptances outstanding	35,290	26,918
Other assets	23,225	32,998
Total assets	808,448	562,368
Demand deposits of individuals partnerships and corporations	91 792	91,792
Time and savings deposits of individuals partnerships and corporations	227,932	227 932
Deposits of U S government	1 700	1,700
Deposits of states and political subdivisions in the United States	18,010	18,010
Deposits of foreign governments and official institutions	3,811	3,811
Deposits of commercial banks	33,453	33,453
Certified and officers' checks	4 186	4 186
Total deposits in domestic offices	380 883	380,883
Total demand deposits	128,555	128,555
Total time and savings deposits	252,329	252,329
Total deposits in foreign offices*	222,373	NA
Total deposits	603 256	380,883
Federal funds purchased and securities sold under agreements to repurchase	74,901	74 763
Interest-bearing demand notes issued to the U S Treasury	8,464	8,464
Other liabilities for borrowed money	20 505	8,929
Mortgage indebtedness and liabilities for capitalized leases	981	969
Banks liability on acceptances executed and outstanding	35,450	28 737
Other liabilities	25 126	20,106
Total liabilities	768 683	522 851
Subordinated notes and debentures	2 577	2,328
Preferred stock	10	10
Common stock	7 413	7 413
Surplus	11 361	11,361
Undivided profits	18,060	18,060
Reserve for contingencies and other capital reserves	344	344
Total equity capital	37 188	37 188
Total liabilities and equity capital	808,448	562 368
Number of banks	124	

* For reporting purposes foreign offices include Edge and Agreement subsidiaries located in the U S and branches in Puerto Rico Virgin Islands and Trust Territories

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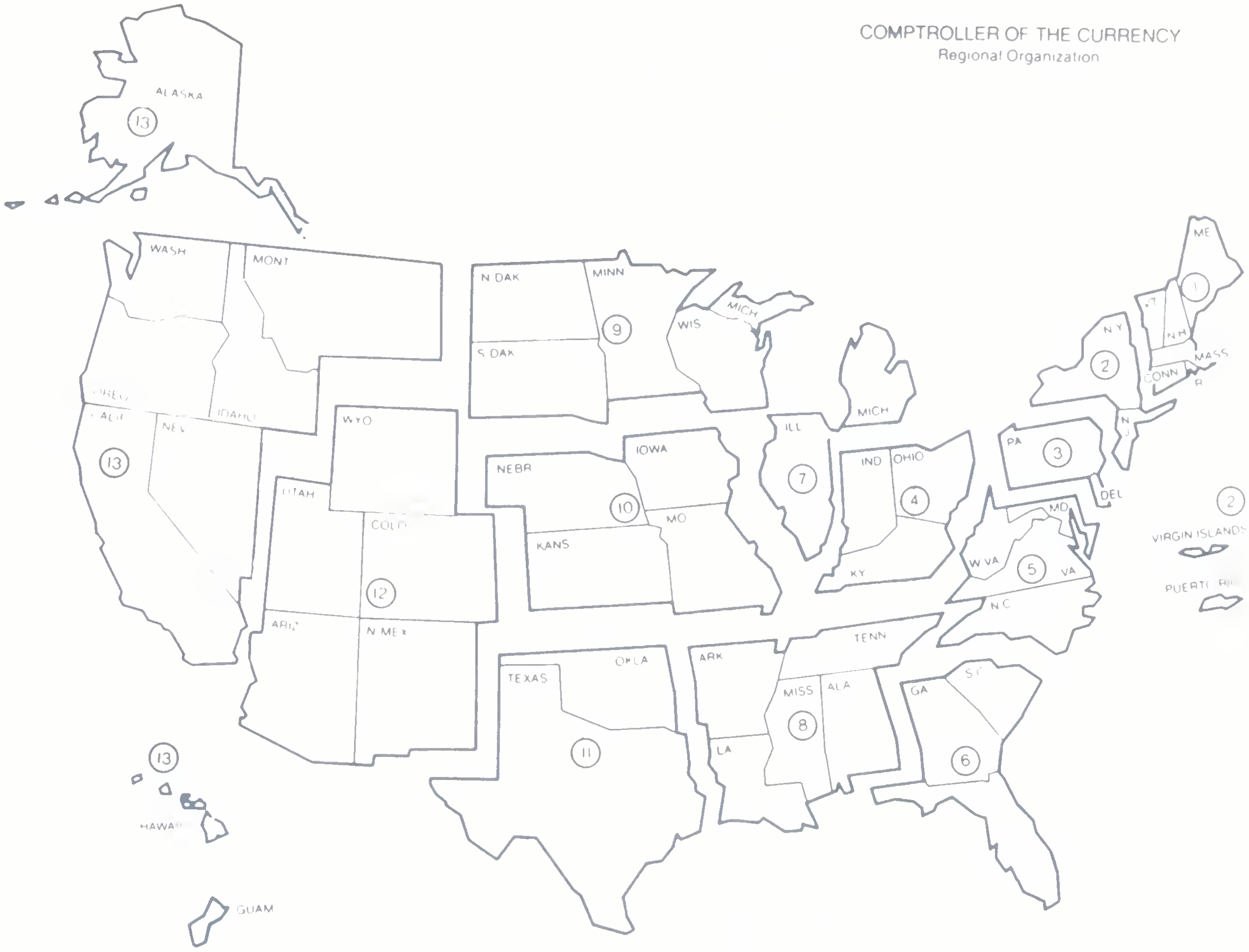
COMPTROLLER OF THE CURRENCY
Regional Organization



Region 1
Harbor Plaza Eighth Floor
470 Atlantic Ave
Boston MA 02110

FTS	8 223 2274
Commercial	617 223 2274

Region 2
1211 Avenue of the Americas
Suite 4250
New York NY 10036

FTS	8 662-3495
Commercial	212 944-3495

Region 3
Three Parkway Suite 1800
Philadelphia PA 19102

FTS	8 597 7105
Commercial	215 597 7105

Region 4
One Erieview Plaza
Cleveland OH 44114

FTS	8-293 7141
Commercial	216 522 7141

Region 5
F & M Center Suite 21-51
Richmond VA 23277

FTS	8 925 2406
Commercial	804 643 3517

Region 6
Peachtree Cain Tower
Suite 2700
229 Peachtree St NE
Atlanta GA 30303

FTS	8-242-4926
Commercial	404-221-4926

Region 7
Sears Tower Suite 5750
233 South Wacker Dr
Chicago IL 60606

FTS	8 353-0300
Commercial	312 353-0300

Region 8
165 Madison Ave Suite 800
Memphis TN 38103

FTS	8 222 3376
Commercial	901 521 3376

Region 9
800 Marquette Ave
Suite 1100
Minneapolis MN [illegible]

FTS	[illegible] 7684
Commercial	612 [illegible] 7684

Region 10
911 Main St Suite 2616
Kansas City MO 64105

FTS	8 758 6431
Commercial	816-374-6431

Region 11
1201 Elm St Suite 3800
Dallas TX 75270

FTS	8-729 4400
Commercial	214 767 4400

Region 12
1405 Curtis St Suite 3000
Denver CO [illegible]

FTS	[illegible] 4883
Commercial	303 837 4883

Region 13
One Market Plaza
Steuart Street Tower
Suite 2101
San Francisco [illegible]

FTS	[illegible]
Commercial	[illegible]

Comptroller of the Currency
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